Actions upon the Case
FOR
SLANDER.
OR, A
Methodical Collection
Under certain Heads,
Of Thousands of CASES,
Disperſed in the many Great Volumns of the LAW, of what words are Actionable, and what not. And of a Conſpiracy, and a Libel.
BEING
A Treatiſe of very great uſe and conſequence to all men, eſpecially in theſe times, wherein Actions for Slander are more common then in times paſt.
With an exact Table annexed, for the ready finding out any thing therein.

By W. SHEPPARD Eſq;

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FK
MVSEVM
BRITANNICVM

TO THE

Right Honourable the Lord Chief Juſtice of the Court of *the Kings Bench*,

The Lord Chief Juſtice of the Court of the *COMMON PLEAS*.

The Lord Chief Baron of the Court of the *EXCHEQUER*.

And the reſt of the Reverend Judges of the ſame *COURTS*.

Honourable Lords, and Reverend Sages of the LAW,

TO whom ſhould I preſent this Piece, but to Your Selves? And of whom ſhould I begge the Patronage thereof, but of Your Selves? The Work being about the LAVV, and nothing elſe, but

the Grave and Learned Judgements, Reſolutions, and Opinions, of Your Eminent and Learned Predeceſſors; By which they being dead, yet ſpeak. And though it muſt be confeſſed, that neither the Author nor the VVork have any thing in them to merit Your Approbation, yet Your Goodneſs, and Condiſcention will be the more eminent, and ſingular, in affording both him and it Your Countenance and Protection, and lay greater Obligations upon

Your Lordſhips

moſt humble Servant.

W. SHEPPARD.

TO THE READER.

Judicious Reader,

IT *is not improbable, but we are faln into the laſt age of the World, foretold by our bleſſed Saviour*, Wherein the love of many ſhall wax cold, and Iniquity ſhall abound. *And among the abounding Iniquity of this Age, the iniquity of the Tongue*, that little Member, ſet on fire by Hell, *is not the leaſt: And among the evils of the Tongue, is there any more pernicious and deadly, and yet more common and epidemical then* Backbiting and Slander? *May we not now ſay, with the Prophet* Jer. 6. That men walk with Slanders: *And with the Royal Pſalmiſt*, Pſal. 50. Thou ſitteſt, and ſpeakeſt againſt thy Brother, and Slandereſt thine own Mothers Son. *It is true, that in former times, we find* Actions of the Caſe for Slanderous words *very rarely brought; which ſpeaks thus much, that ſuch words were then very rarely ſpoken. But in theſe daies they are become almoſt as natural to men, as their language and diſcourſe; and therefore the diſeaſe, ſo deeply rooted, and over-ſpreading, calls for the application*

cation of the Remedy, which our Law doth abundantly furniſh us withall. And hence it is, I have been encouraged to engage in this work; which is nothing elſe but a naked and Methodical Collection of the Remedies preſcribed by the Law againſt this Malady. Wherein we have thought it beſt to name (amongſt others of more Authority) ſome of the Caſes in the Books of uncertain Authors lately publiſhed, and leave the ſame to the Judgement of the Reader. You may, perhaps, find herein ſome ſeeming Impertinencies, ſometimes, Contradictions and vain Repetitions, the which upon mature Deliberation will be found otherwiſe. And there will be, doubtleſs, by reaſon of the ſhortneſs of time, and haſte of the Preſs, many Errata's of mine and the Printers eſcaped. But this notwithſtanding, I doubt not, but it may be found very uſeful to the ends I have propoſed to my ſelf therein, viz. *For Lawyers, to lead them to the Caſes, that they ſhall have occaſion to look after therein. For others, to teach them to ſet a watch before the door of their Lips. And if now you will but cover the Defects of the work, and accept of the pains of the Author, this is all that is deſired by your Friend, a lover of his Countrey, and well wiſher to the Laws thereof.*

W. SHEPPARD.

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Action

ACTION OF THE CASE.

CHAP. I.

Of an Action of the Case in general.

Action of the Case.

What it is. Sect. 1.

AN Action of the Case, is a Writ brought against one for an offence done without force, as for not keeping promise, for breaking Trust, for slanderous words, or the like Misdemeanour: And is called an Action of the Case, because the whole Cause or Case, so much as is in the Declaration (save only the time and place)

is set down in the Writ: And there is no other Action given in the Case, save only in some few Cases where the Plaintiff hath his choice to bring this or some other Action.

How many kinds of it there be.

This Action is sometimes about Defamations or Slanders; and this may be by words spoken. Or it may be by a deed done. By words spoken; it is either for words spoken against the Title of a mans Land, or for words spoken against the man himself. This Action is in some Cases for other things. And so it is also either for not doing what the man ought to do, or it is for doing of something a man should not do, or it is for doing of something otherwise than he should have done it. This for the not doing of what a man ought to do, is either upon his own undertaking to do it; or it is upon the requiring of Law, without any personal undertaking of his own.

The Action for Defamation is either for a Defamation by words, where one speaketh any thing to the prejudice of the Life, Estate, or Name of another, or for a Defamation by deed, where one doth any thing that will vehemently imply an Accusation of some great Crime against another. This also is either of great men, called Scandalum Magnatum, or it is of ordinary men. The Action of the Case for deeds, is either upon an Assumpsit, or Promise, or upon a Nusance, upon a Trover and Conversion, upon a Deceit, upon a Conspiracy, or it is upon some other Non-feasance, or Mis-feasance. Amongst Slanders and Defamations, also some of them tend to the dis-

Scandalum Magnatum.

For words and Acts of Slander

disgrace of the Title of his Land. Those against the person also, do some of them tend to the peril of his life; some to the prejudice of a man in his Livelihood and Estate, and some to his reproach in his Name only. Coo. 4. 92, &c. Dyer. 8. 72.

A Defamation may be also by deeds, as by the doing of something against a man, which will be Tant-amount, or more than a Slander by words, as to call a man in question, and prosecute a man in a course of Justice, for a supposed Crime, whereof he is innocent, bringing of an Action, &c. Bulst. 3. Part. 272. Coo. 4. 14, 15. If the Lord shall please to give time and strength, wee may give you an account of the Law touching this subject in both, the one after the other.

Some Defamations also may be said to be temporal or civil; as to call one Traitor, Murderer, Theef, Bankrupt, and the like.

Some spiritual, as to call one Adulterer, Baud, Whore, Heretick, and the like.

And as to those Slanders called Spiritual, Sect. 2.
no Action will lye in a Civil Court, unless the party slandered have some special loss by them, but the proper place for relief for these is in the Spiritual Court; And there are other Slanders that may be said to be Civil or Temporal. And for these the proper remedy is to be had in the Civil or Temporal Courts, as for calling Traitor, Theef, Murderer, Bankrupt, and the like. And yet in some cases hee may bring his Action at the Common Law for that which hee may also have his

Remedy in the Ecclesiastical Court; for the Common Law is to be preferred where they stand in equal degree in respect of the matter to be tryed. Mich. 23. Car. 1. B. R. Styles Register.

Finches Law 185. 43. Ass. Pl. 381. Jenk. Cent. 1. Case 93.

We might here have distinguished Slanders by Publick, and Private, or Personal: For there is a Slander of the State, as to report any thing about the Affairs thereof that is false, and may be to the prejudice of it, as that the Coin is abased, the Wooll transported, or the like. And this is punishable upon Indictment by Fine and Imprisonment. But we shall not have to do with this at all. But with private and personal Defamations, which are either of eminent, or common persons.

There are some Slanders by words that are Actionable, albeit the party of whom the words are spoken have no special loss by them, and such generally are all the Slanders that bring a man in question for his life, as to call a man Traitor, Murderer, Thief, or the like. And some others, for speaking of things, that if they were true, he might be fined or imprisoned for them.

Whore, Bastard.

And there are other Slanders that are not Actionable, but in case where the party slandered doth suffer some special loss by them; As to call one Whore, Bastard, or the like. Croo. 1. 99, 100.

There are also some slanderous words, that being spoken of any person whatsoever are Actionable, as to call a man Traitor, or Thief,

Treason, Theft

or

or the like. And there are others that will not bear Action, unless they be spoken of some certain men, as Merchants, Traders-men, or the like; as to call a man Bankrupt, or the like. Goldsb. 126. 84. Croo. 1. 99, 100.

We shall begin with Actions about words, the which we shall dispatch in this peece, and then shall speak to Actions about deeds: And in our labour about words, to open the Law herein, we shall first lay down some general Rules about all kind of Slanders, and the Slanders of all kinds of men, and then descend to particulars.

CHAP. II.

Some general things of Actions of the Case for Words.

WEE shall first give you in sundry Rules, and a few Cases, the general Doctrine of Actions of the Case touching Slanders; And these like the veins in the body run through the body of all the Cases hereafter following, wherein the words are, or are not actionable, as they fall within these Rules. And then we shall give you the Cases themselves as examples answering to these Rules. The Rules are these. Sect. 2.

1. That all scandalous words which touch or concern a man in his life, as to say he is a Traitor, Theef, or the like; or which touch him in his Liberty, as heretofore to have said of one, He was Villain to J. S. or which concern a man in member in any corporal punishment, §. 22.

Theft. as to say, A man hath stoln six-pence (which is Petit Larceny) or the like: or which scandal a man in his office, or place of Trust, as to say to a Judge or Justice of Peace, Hee is a Corruption in an office. corrupt Judge or Justice of Peace, or the like; Or which slander a man in his Calling or Deceit in Trade. Trade, by which he gets his living, as to say to an Attorney, You are a cheating Knave; of a Trades-man, that lives by buying and selling, hee is a Bankrupt, or the like; or which tend to the loss of a mans preferment, as to say to a man about to be preferred to a Heretick. Benefice, That hee is an Heretick; or of a Whore. woman like to have a Husband, that shee is a Infectious Disease. Whore, or the like, if by this means they lose their preferment; or which charge a man to have any dangerous disease, by reason whereof hee ought to separate himself, or be separated by the Law from the society of men, as to say a man hath the French-Pox; or the Plague, or the like, or which tend to the slandering of a mans Title, as to say, Hee hath no Estate in his Manor, when hee is about, and hath need to sell it, or the like: Or which tend to a mans dis-inheritance; as to say to Bastardy. an Heir to Land, Hee is a Bastard, or the like: Or which tend any other way to the infamy, discredit, or disgrace of a man; or that may any way import any damage to a man. All such words regularly are Actionable, Coo. 4. 13, 14. &c. Coo. 10. 130. Dyer. 26. 72. Styles Regist. 6. Kitchin. 172. Bulstr. 1. Part. 40. This General Rule for the clearing of it, doth admit of many Extensions, and many Exceptions

ons and Limitations, which wee shall lay down in the Rules that follow. The Rules of Extension may be these.

Some words Actionable, others not. Sect. 2.

1. That albeit some of the words spoken at the same time are, and others of them are not Actionable, yet an Action may lye for the Actionable words, and the Action may be brought for them altogether. Dyer. 75. Plow. 118. Trin. 8. Jac. B. R. Lukers Case. Jenk. Cent. 7. Case 70. Coo. 10. 131. Styles 112.

Words equivalent to Actionable words.

2. That many words (though of themselves they be not Actionable) yet being equivalent to words that are Actionable, may bear an Action; for they may prima facie, sound from the mouth of the speaker, in the ears of the hearer, as bad as any Actionable words. Pasche. 15. Car. 1. B. R. Agræd.

Which way so ever published

3. That it matters not how the words (if they be Actionable) be published or divulged, whether by writing, or speech; for the Action is maintainable in both Cases. So a man might have been charged in this Action for a slander, by a Bill in the Star-Chamber, and so hee may be now by a malicious Indictment. Coo. 4. 14, 15. See in Huttons Rep. 10. In Owens Rep. 30.

Spoken to, or of a man, all one.

4. That it is all one as to the maintainance of the Action, if the words be spoken or written to the person slandered before his face, or of him behind his back, Old Book of Entries. Coo. 4. 14, 15. and Hob. P. 292.

Spoken in the second or third person, all one.

5. That it is not material whether the words be spoken in the second person to the party slandered himself, as thus. Thou art, or

Theft. you are a Thief, or in the third person behind his back, thus; J. S. is a Thief, for the Action is alike maintainable in both Cases. Coo. 4. 14, 15, 16.

Words written or spoken in another Language. 6. Nor is it material in what language the words are written or spoken, whether in Latine, or Welch, or in the Native Language, they be scandalous in all, if they be spoken so as the hearers do, or may attain to understand the meaning of them. And yet if the words in their Native Language be such as are not Actionable, no Action will lye for them; And if in another Language in the hearing of them that do not understand them, it seems they are not Actionable; And yet if one speak words in another language that are Actionable, and hee English them himself by words that are not Actionable, it is said, the words shall not bear Action. Croo. 1. Part last publisht, 496, 497, 865. 15. Car. 1. B. R. in Hetleys Rep. 175. In Huttons Rep. 8. in Hobb. Pl. 155, 351, 236. See in Marches Rep. Bendlows Rep. 134. Styles Rep. 263. Yet see Brownl. Rep. 6. Hobb. 126, 291.

pa. 27.

Spoken after any manner of Speech. Sect. 3. Theft. 7. Nor is it material how the words be uttered, whether directly, or indirectly, and obliquely; and whether by way of Affirmation, as A. is a Thief, or by way of Interrogation; as where is the peece you stole from mee? Hath that Bastard B. caused you to be arrested? Hast thou been at London to change the mony thou didst steal from mee? or by way of Argumentation, as, I will prove J. S. to be a Thief: Or by way of Negation, when it doth imply

imply an Affirmation, as, You are no Thief; or by way of Irony, as, You are no Thief, are you? Or thus, I have ſaid that J. S. is a Thief, and I will juſtifie it, and have told him ſo much to his face; or the like. For in all theſe Caſes they are Actionable, Paſch. 15. Car. 1. Appletons Caſe. B. R. Hill. 4. Jac. B. R. Lady Morriſons Caſe. Croo. 2. 275. Croo. 1. laſt Part publiſht, 273. See in March. Rep. fol. 7. pl. 18. and 58. pl. 19. And ſo in like Caſes, March. 19. pl. 44, and 55. pl. 9. Goldsb. 186, 139. Croo. 2. 103, 569, 406, 422. Coo. 12. 134. 30. Aſſ. 10. Jenk. Cent. 8. Caſe, Nelſons Caſe. Croo. 2. 275, Hobb. Rep. pl. 276, 289. Theft.

8. Nor is it material whether it be ſpoken as from the Speaker himſelf, or by hear-ſay, or by Relation, or by the Report of another, if the other did not report it. As when one ſaith, J. S. ſaid A. B. is a Thief; if J. S. did not ſay ſo, the words are Actionable, if he did ſay ſo, he may juſtifie the ſpeaking of them. But if he report the words, as to ſay, one ſaid A. B. is a Thief, and not name the Author of the Report, the words are dangerous, and may be Actionable. Croo. 1. Part laſt publiſht, 400. M. 9. Jac. B. R. adjudged. Croo. 2. 102, 406, 407. In March. Rep. 8. Coo. 12. 134. Jenkins Cent. 8. Caſe 7. Leonard. Rep. 187. Croo. 2. 275, 422. Yelvertons Rep. 21. Bulſtrode Rep. 3. 225. As from a mans ſelf, or from the Report of another.

9. Nor is it material whether they be uttered by way of earneſt, or ſeemingly only in jeſt, but with a mind appearing to be malicious, Spoken in earneſt, or in jeſt.

litious, and with a purpose to slander, for the Action will lye in both Cases.

Spoken by one sober or drunk

10. Nor is it material, whether the man that uttereth them be sober, or drunk with Wine or Passion; for the Action lieth alike in both Cases.

Spoken at one, or more times, and in one or more sentences.

11. Nor is it material, whether the words be delivered in one, or more sentences, or speeches, or at one, or more times, they may enure to the aggravation of each other, or if the words be all of them actionable give several Actions. Croo. 1. 238. Bulstrod. 3. 283. Coo. 12. 134.

Sect. 4.

12. Nor is it material whether the Slander be raised and fixed by an extra-judicial way, as by ordinary Talk, or by a judicial way, as by Indictment, or the like, for in both cases they may be actionable. Jenk. Cent. 7. Case 64. Kelw. 13. Coo. 4. 26. Dyer. 285. Leonard. Rep. 187.

Taken improperly.

13. That this Action will lye for words, though the words in a proper speech cannot be true; as if a woman say to me, Thou hast stoln my goods; for she hath no goods, but what is her Husbands, adjudged. 9. Jac. Croo. Rep. 2. 60.

Theft.

14. That the slander that doth concern a mans Life, Liberty, Member, or any corporal punishment, his Office, Trust, Calling, or the Charging with a foul disease, to cause a separation; these Actions are maintainable without any Averment in the Action of any particular damage that came to the Plaintiff by it, but it is otherwise in the rest of the Slan-

Averment.

Slanders; For if a man ſpeak againſt another, words that are not in themſelves actionable, as that he is a Rogue, Knave, Couzener, Fornicator, or the like; for theſe words hee can bring no Action without Averment of ſome ſpecial loſs hee hath ſuſtained by them. p. 22.

Rogue. Knave. Couzener. Fornicator.

15. That the Quality of the perſon of whom the words are ſpoken, doth much tend to the maintainance of the Action. And therfore ſome words that in themſelves are not actionable; relating to ſome perſons, may bee actionable. So that albeit it will not bear an Action to call an ordinary man Papiſt, yet it will bear an Action to call the Archbiſhop of Canterbury Papiſt. So albeit it will not bear an Action to ſay of an ordinary man, Hee is no true Subject; yet to ſay ſo of a Privy Counſellor, Juſtice of Peace, Sheriff of a County, Captain of a Troop of Horſe, about the King, may be Actionable. As it is reported in Leonards Rep. 335. So to ſay to one of the Privy Counſel, Hee is an untrue man to the King. Trin. 32. Eliz. B. R. Walgroves Caſe. And yet it hath been adjudged not to lye for this, ſaid of a Knight, and one of the Gentlemen of the Kings Privy Chamber, That he was a couzening Knave, and lived by couzenage. In Godb. Rep. 284. Croo. 2. 427. In Leonards Rep. 336.

The quality of the perſon of whom they are ſpoken conſiderable. Papiſtry.

Couzening.

16. That to charge a man with any Crime of Felony after a General, or ſpecial Pardon, albeit the Defendant know not of the Pardon, will bear an Action. So to charge a man

After a pardon

man with a Crime after he hath been indicted for it, and acquitted of it upon his trial on the Indictment. In Hobb. Rep. pl. 71. 105. In Owens Rep. 150. Brownl. and Goldsb. Rep. 10. 1. Ed. 3. Corone. 15. 2. Ed. 3. Corone. 18.

Words not Actionable in themselves, that are actionable by circumstances and accidents.

17. That words that in, and of themselves, and in their own nature are not Actionable, yet relating to some Persons in their Offices, Callings, and Conditions of life: Or by reason of some Accidents happening by them, they may be Actionable. As if one by doubtful and uncertain words (that are not Actionable) shall cast a charge of Treason, or Felony, or the like, and any special loss come to him of whom the words are spoken by them; these words may be Actionable, Coo. 4. 15, 17, 20. Mich. 19. Jac. B. R. Harrisons Case. In March. Rep. 114, 115. In Brownl. Rep. 1. 11, 12. Croo. 2. 484. In Brownl. 2. part, 166.

Treason.

Felony.

Action brought for part of the words.

18. That if a man speak many slanderous words together of another, he of whom they are spoken, may have his Action for any part of the words alone, and omit the rest of the words. In Owens Rep. 30.

Words actionable in some Countries only

19. That there are some words, uncertain and unknown, and of no use in some Countries, that may be certain and known in other Countries, and be equivalent to slanderous words in another Country, and so be Actionable, being spoken there. And therefore for any such words spoken in the Country where they are used and known, or spoken elsewhere, if it be before them that understand them, they may be Actionable. So to use any of

these

theſe words, Thou art mainſworn; or, thou art an out-putter; or, thou art a healer of Felons; or, thou haſt ſtrained my Mare; or, that thou (being a Shooemakers Journey-man) wilt cut thy Maſter out of door. Every one of theſe ſpeeches are actionable in ſome places. But then ſome ſay, there muſt be this Averment in the Declaration, that they do carry this ſenſe in the Country where they are ſpoken. And yet others ſay it may be proved at the Trial to have this ſenſe. But it is moſt ſafe to averre it. And thus, to ſay of one in Devonſhire, and thereabouts, Hee is a healer of Felons; For there it is taken for a hider, or concealer of Felons, where it is ſaid, The healer is as bad as the ſtealer. So to ſay of one in ſome Countries, Hee is mainſworn, where it is taken for, Hee is forſworn. So to ſay of one in ſome Countries, Hee hath ſtrained a Mare, where it is taken for, Hee hath ſtoln a Mare, or, buggered a Mare. So to ſay of a man in Northumberland, Weſtmerland, and ſome other places, Hee is an out-putter, where it is taken for a Horſe-ſtealer. So to ſay of a man in Weſtmerland, and ſome places, Hee is a Sheep-Theef, where it is taken for a Stealer of Sheep. So to ſay of a man in ſome places that is ſervant to a Shoomaker, Thou wilt cut thy Maſter out of doors, where it is taken for, Thou wilt undo him. So to ſay of a man in ſome places, as in the North Country, Hee is a Daffdowndilly, where it is taken for this, Hee is an Ambodexter: Theſe, and ſuch like words as theſe, ſpoken in the places where they are known, will be

Ja. 77: 26 8.

Averment.

Healer of Felons.

Mainſworn.

Strained a Mare.

Out-putter.

Sheep-theef.

Cut his Maſter out of doors.

Daffidowndilly.

be actionable. But some hold that if they be not spoken in the hearing of some that do understand them, that they are not actionable; And yet this may be a little doubted; For he that hears them spoken may ask the meaning of them of those that know it. And so the party will be slandered, and have no remedy. See for all these things in Browl. 1. part. 13. Hobb. Rep. 350. 236. 106. 126. 191. 394. Yelverton Rep. 153. Bulstr. 1. part. 146. March. Rep. pl. 2. 17. Bulstr. 2. 146. Coo. 4. 25. Brownl. Rep. 4. 6. In Hetleys Rep. 123. Noys Rep. 98. 133. Bendloes Rep. 186, 187.

Slander by Act done.

20. That where a Defamation is cast upon a man by deed, which is tantamount, or more than a slander by word; as where a man is maliciously indicted for Treason, Felony, or the like; there the party grieved may have this Action. Bulstr. 3. part. 272.

Averment.

21. That where words are in themselves actionable, as tending to the Infamy Discredit, and Disgrace, and importing damage to the man of whom they are spoken, there the Action will lye without any Averment of any special loss by them. And so it is held for scandalous words that touch a man in his Life, Liberty, or Member, or any corporal punishment, or which scandalize a man in his Office, or Place, or Trust, or in his Calling, or Function, by which he gets his Living, or which do charge him with any great infectious disease. All such words will bear an Action, without alledging or averring of any particular damage by the speaking of them. But in all other

other Cases, there must be a special damage alledged to be sustained by the Plaintiff, by the speaking of the words. And if that be in the Case, almost any words that carry any thing in them of a foul aspersion, may be actionable, Bulst. 1. part. 40. So much of the Rules of Extension.

22. The Rules of Exception or Limitation shall be these.

That actionable words in all cases (especially in cases where they may bring a man in danger of his life) must have these qualifications and conditions in them.

1. They must be false, for if the thing be true, let the words be what they will, the party that speaks them may justifie them.

2. They must be malicious, and purposely; and intentionally to slander and defame, for otherwise notwithstanding they be true, yet will they not be actionable.

3. They must be particular and clear, for if they be so general, as thereby to be ambiguous and doubtful, no Action will lye upon them.

4. They must be of a simple, single, and known sense; for if they be of an indifferent meaning, no Action will lye upon them.

5. They must be certain, against which there may not be any intendment; for if they be altogether uncertain, either as to the person slandered, or the slander it self, no Action will lye upon them.

6. The words must have in them some matter of weight and substance; for if the things spoken

ſpoken import no ſubſtantial matter, no Action will lye upon them.

7. They muſt be poſitive, affirmative, and direct, importing ſome peremptory Acculation; for if they import a ſlander by way of Argument, Inference, or Implication only, no Action will lye upon them.

8. They muſt import a thing poſſible to be; for if they import a thing ſimply and apparently impoſſible, no Action will ly upon them.

9. They muſt import ſome Act done; for if they import only an Affection, Inclination, or Intention to do ſomething, and nothing done, no Action will lye upon them.

10. They muſt carry in them, or cauſe by occaſion of them ſomething of damage and prejudice to him againſt whom they are ſpoken; for if it be apparent, they neither do, nor will bring any damage to him, no Action will lye upon them.

11. The words all of them ſpoken together muſt be actionable; for if ſome of them only be actionable, and the reſt ſpoken at the ſame time do qualifie them, and take away the force thereof, no Action will lye upon them.

12. They muſt be ſpoken in an extrajudicial way; for if they be ſpoken in a courſe of Juſtice, and a judicial way, no Action will lye upon them.

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13. They muſt be ſpoken in the hearing of ſome body that doth underſtand them; for if they be ſpoken in another language, which none of them that do hear them underſtand, no Action will lye upon them. 14. The

14. The words, if they charge a man with a crime, must import that the man charged hath notice, or knowledge of the ground or occasion of the crime, or they will not be actionable.

15. They must carry an Import of Slander in them, as they are taken and understood in their vulgar and common sense and acceptance; for if they become scandalous, as they are taken in a forrein, strict, and grammatical sense and construction only, this will not bear an Action. For the first of these.

1. The words spoken, and the thing said against him of whom they are spoken must be false; for the Writ is falso & malitiose, dixit, &c. And so the Action must be laid, or else it is not well laid. For if the words spoken be true, let them be what they will, the defendant in the Action may justifie the speaking of them. But in that case hee must take heed hee do not plead not guilty; And if they be malicious, and false, an Action will lye upon them. Dyer. 236. Broo. 104. Action of the Case. Huttons Rep. 73. Croo. 2. 91. The words must be false. Sect. 6. Pleading.

2. For the second thing; The words spoken must be malicious, and with an intent and purpose to prejudice him against whom they are spoken; For the Writ is falso & malitiose, and it must be both false and malicious, otherwise it is not good, it is therefore in this considerable Quo Animo. The words therefore must be such, as importing something, that if true, may bring the party against whom they are spoken, in danger for his Life, Li- The words must be malicious.

berty, Estate, or Credit, and no good cause can be shewed for the speaking of them. But for the discovery of the malice, these things are to be known.

1. That where no other Cause can be shewed of the speaking of the words; there the Law will take it to be malicious. That which is chiefly therefore to be considered, is Causa Dicendi. For if a Lawyer shall in the pleading of his Clients cause, innocently, and pertinently to the cause in hand (which he must look to) and according to his Instructions, speak such words as may charge a man with a Crime, or be actionable in another Case; this shall not be taken to be malicious, and therefore not actionable. And yet if the Lawyer shall speak those words at another time, or in an another place then when and where the Cause is debated; this may be actionable. So where a Preacher in preaching shall recite a History out of a Book, that doth prove false and scandalous; this will not be actionable. So if one advise his friend to forbear the Company of such a one, for that he hath the Pox, or tell his friend of somewhat that is reported of him, and wish him to clear himself of it; In these Cases, no Action will lye for these words. For here the cause, or occasion of the speaking of the words, doth shew, that there was no malicious intent in the speaker when he spake the words. And yet if one shall make this but a Cloak for his malice in any such Case as this, it will be otherwise. But by these and such like

like Circumſtances, it muſt be conſidered, with what mind hee ſpake the words, and whether there were malice in them, or not. Bulſtr. 1. part. 148. Hill. 21. Car. 1. B. R. Stiles Regiſt. 5. Croo. 2. 91. 339. Trin. 7. Car. 1. B. R. Norman and Simonds Caſe. Coo. 4. 16. Hobb. Rep. pl. 11. 399. Dyer. 236. Huttons Rep. 73. Dyer. 236. Bulſtr. 1. part. 148.

3. For the third thing, The words ſpoken muſt be clear and perſpicuous; as, Thou art a Theef, J. S. is a Bankrupt, or, thou haſt killed J. S. or, thou was forſworn in the Kings Bench Court, or, in a Court of Record, and the like. And not obſcure and ambiguous. And therefore for ſuch like words as theſe; as to ſay, I have matter againſt him, for A. hath found forgery, and can prove it againſt him; or, I charge him with felony, for taking mony out of the pocket of J. S. Thou waſt cooped up for forging Writs. The words muſt be clear & perſpicuous. Obſcure words Forgery.

Or, Thou didſt forſwear thy ſelf in the Kings Bench; for this may bee taken in the Priſon called the Kings Bench. Or thus, Hee hath but one Mannor, and hee hath gotten it by ſwearing and forſwearing; or, thou haſt ſtoln my Apples or my Corn; for it may be from the Tree, or out of the Field. No Action will lye for theſe, and ſuch like words as theſe. Popham. Rep. 211. Hobb. Rep. pl. 381, 382. Croo. 1. 195. Coo. 4. 15. Perjury. Theft.

4. For the fourth thing; They muſt be of a ſimple, ſingle, and univocal ſenſe in the vulgar acceptance of them: As, Thou didſt burn the Barn of J. S. full of Corn; Or, Thou haſt The words muſt be of a plain and ſimple ſenſe, or univocal.

the French-Pox. Yelvertons Rep. 21.

✗ Words of a double ſenſe, or equivocal.

For if they be of a double and indifferent ſenſe, that may be taken one way or other; there if the words taken in either ſenſe be actionable, they muſt needs give an Action. But if the words will bear a good, and a bad ſenſe, or a worſe and better ſenſe; there if there be nothing in the Caſe by that which is ſaid with them, and before, or after them, to guide them more to the worſer, than to the better ſenſe, they ſhall be alwayes taken in the better, and not in the worſer ſenſe, and ſo not be liable to Action. For in this the Rule is, verba ſunt accipienda in mitiori ſenſu. And again, Benignior ſenſus in generalibus & dubiis preferendus. It is therefore agreed, That no Action will lye, for ſaying of a man,

Burning a Barn

Hee did burn my Barn, for it may be a Barn without Corn; Nor for ſaying,

An infectious diſeaſe.

Hee hath the Pox; for it may be the ordinary, not the French-Pox; Nor for ſaying, Thou art a Coyner of Gold; for it may be his Trade, and hee may do it by authority; Nor for this, I charge you with Felony, for this may be ſuch a

Felony.

Felony, as for which damages only are recoverable as a Maihm is; Nor for this, Thou

Perjury.

art forſworn, for this may be in ordinary communication, or it may bee in a Court of Juſtice, or the like. And no

Invendo.

Invendo in any of theſe Caſes will make any ſuch like words that in themſelves are not actionable to bee actionable. And yet if in this Caſe, the Common, Ordinary, and Violent ſenſe of the words in the Import thereof be the worſe ſenſe; and there

there bée no other wo:ds ſpoken with them to turn their ſenſe the other way, there they may be taken in the wo:ſer ſenſe, and liable to Action; and therefo:e it hath bèn adjudged to lye fo: theſe wo:ds, A. hath had the uſe of her body; and fo: theſe wo:ds, A. hath ſpoken Treaſon. Huttons Rep. 75, 76. Coo. 4. 20, 21. Godb. Rep. 1. 167, 181, 375. Hob. Rep. pl. 351. Popham. Rep. 211. Croo. 1. 352. Incontinency. Treaſon.

5. Fo: the fifth thing, That the wo:ds that ſhall maintain an Action muſt be ſo apparent, direct, and certain, that there may be no intendment againſt them; as J. S. is a Theef; o:, your Husband, o:, your Wife, o:, your Father is a Theef. Fo: if they be altogether uncertain, either as to the perſon ſlandered, o: as to the ſlander it ſelf, no Action will lye upon them. And therefo:e if one ſay, One that is neer you is a Theef, o:, mine enemy is a Theef; o:, one of the Sons [o:, one of the Servants] of J. S. (who hath many Sons o: Servants) is a Theef, o: the like; no Action will lye fo: theſe wo:ds. And ſo if one ſay, A. deſerves to be hanged; O:, A. hath taken away money from J. S. o:, A. ſeeks my life; o:, A. hath a mind to kill mee; o:, A. ſmells of the murther of J. S. o: the like; no Action will lye fo: any of theſe wo:ds. And no Invendo can in theſe Caſes make the wo:ds certain & actionable. And yet if there be any thing elſe ſpoken in the conference, by which there is a certain deſcription of the perſon ſlandered, as where the conference is about ſuch a Son o: Servant by name, and therein the party ſay, The words muſt be direct and certain as to the perſon and thing. Sect. 7. Theft. Murder. Invendo.

Theft. Hee is a Theef, or by which the thing intended by the ſlander is cleared, this may make the words certain, and ſo actionable. Coo. 4. 17. Hobb. Rep. p. 382. Croo. 1. 127. Hobb. Rep. pl. 196. Croo. 2. 184, 443. Brownl. 1. part. 2.

For the ſixth thing, That the words ſpoken muſt have in them ſome matter of weight and ſubſtance; and therefore the Law will not give this Action for every light and trivial ſpæch, nor for every paſſionate word or ſpæch, but there muſt be ſome ſuch weighty and ſubſtantial matter in the words, that if true, might be perilous, and prejudicial to the party of whom they are ſpoken. And therefore it is agræd, That this Action will not lye, for any of theſe following words; Thou art a Villain, Rogue, Varlet, Knave, Couzener, Raſcal, Cheater, Railer, Miſcreant, Hypocrite, or the like. Nor for calling of another, any, or all of theſe names together. And yet any of theſe words being joyned with other words that are actionable, may aggravate the ſlander, and ſo increaſe the damages. So to ſay of another, That hee keeps ſuch a Dogg, that his neighbours Cattel about him cannot go in peace; or, that his Cattel are in every mans ground. For theſe, and ſuch like words as theſe, no Action will lye. For in this the Rules are Boni Judicis Intereſt dirimere lites & Malitiæ hominum eſt obviandum. Coo. 4. 15. Bulſtr. 1. part. 40.

Villain. Rogue. Varlet. Raſcal. Knave Couzener. Cheater. Railer. Miſcreant. Hypocrite. 4. 22.

For the ſeventh thing, That the words (eſpecially if they concern a man in his life) muſt

must be ſo particular, poſitive, affirmative, and direct, that they may import a peremptory Acculation. And not by way of Argument, Inference, or Implication only, for if they ſo import a ſlander only, no Action will lye upon them. And therefore it is agreed, that no Action will lye for words thus ſpoken; I fear you will be charged with Felony; or, take heed you be not arreſted for Felony, or, I doubt whether your words may not be treaſonable words; or, thou haſt deſerved to be hanged for Felony; or, if thou hadſt had thy Right, thou hadſt been hanged for Felony before this day; or, I ſhall call him in queſtion for the murther of J. S. or, I ſhall arreſt him for flat Felony. For theſe, and ſuch like words as theſe are, no Action will lye. Hobb. Rep. pl. 381. 286. Bulſtr. 1. part 148. Coo. 4. 15. Popham. Rep. 210. Felony. Treaſon. Felony.

For the eighth thing, That the thing ſaid by the words, muſt be a thing that is poſſible to have been done. For if it import ſuch a thing done, as is altogether and apparently impoſſible, no Action will lye upon them. And therefore it is held, that no Action will lye for ſaying of another, That hee hath killed my Wife, for that the words themſelves do ſhew her to be then alive. Coo. 4. 16. So to ſay to a Brewer, My Mare doth piſs as good Beer as thou doſt brew, theſe words in themſelves are impoſſible, and will bear no Action. And yet if the Brewer in his Trade ſhall ſuffer any ſpecial loſs by them, for this hee may have his Action. Coo. 4. 16. Mich. 15. Jac. B. R. Dicks Caſe. Murther. Trade.

Not for words importing only an inclination or intention to do a thing.

For the ninth thing, That the words must import some Act done. For if they import only an Inclination, Affection, or Intention to do a thing, no Action will lye upon them. And therefore it is held, That no Action will lye for such like words as these; Hee is a Theevish Knave; or, He is a Traiterous Knave; or, Hee is a Seditious Knave. And yet if these, and such like Adjective words, shall import an Act done; as, Hee is a Perjured Knave, or the like; There this Action will lye: Or if they be such words as do slander a man in his Office, Function, or Profession; as to say of a Judge, Hee is a corrupt Judge; or, of such an Officer, Hee is a corrupt Officer; or, Hee is a bribing Knave; Or if they be such words as do slander a man in his Trade; As to say of a Tradesman, Hee is a Bankrupt [or a Bankruptly] fellow. For all these, and such like words the Action will lye. And so also it will where the Adjective word is added to an actionable word; As, Thou art a cunning Theef. And so also it will lye where the intent of doing an Act, and the Act done are joyned together. As, Hee would have robbed mee, and did rob mee of my dagger. And so also it will lye where the words import that hee is doing of the Act, as where hee saith of one, Hee is ravishing a woman, or, hee is robbing a man. Coo. 4. 16, 19. Hobb. Rep. pl. 17. Dyer. 72. Croo. 1. 301. Godb. Rep. 151. Bulstr. 1. part 134, 145, 138, 210.

Adjective words.

Theef.

Corruption in an Officer.

Bankrupt.

Theef.

That the words must

For the tenth thing, That the words must carry

carry in them, or cause by occasion of them something of damage or prejudice to him against whom they are spoken. For if the thing spoken being true, may not hinder, or hurt him by hazard of his life, or by the infringing of his Liberty, or by the impairing of his Estate, or by the defamation of his Credit, no Action will lye upon them. And therefore it is agreed, That to charge a man with a Crime by words in another language, that none of the hearers understand, or to charge a man in an Action brought with the killing of a man, where it doth appear by the Record it self, that the party supposed to be killed, is yet alive, is not actionable; for hee neither hath, nor can have damage by it. So to charge a man with a trivial light matter, as that hee hath erected a Cottage against the Law, or hath a Dog that will not suffer his neighbours Cattel to go in peace; these things will not bear Action. Coo. 4. 16. Bulstr. 1. 148. Croo. 1. 350. Hobb. Rep. pl. 11. 236, 145, 164. 154.

import somewhat of damage to him of whom they are spoken. Sect. 8.

Murther.

For the eleventh thing, That the words all of them spoken together must be Actionable, for words that are in, and of themselves Actionable, may be qualified by the precedent, or subsequent words joyned with them, and spoken at the same time, and therefore where part of the words rent asunder from the rest are Actionable; but there are other words spoken before, or after them at the same time, and in the same speech, or conference that do explain, limit, & qualifie them, in such

That the words must be taken altogether.

such cases they will not be Actionable; and therefore it is agreed, that no Action will lye for the words in the Cases hereafter following. For that thou hast stoln my Apples out of my Orchard, I will say thou art a Theef; or, Art thou not a Theef that hast stoln away my Evidences; or, Art thou not a Murtherer, that hast killed so many Hares? Or, where two are talking of Hunting, and one of them shall brag how many Hares he had killed by Engines, and thereupon the other say to him, Thou art a Murtherer, in these and such like cases no Action will lye upon them. But these two Rules are given herein.

1. That the words that shall qualifie and extenuate such Actionable words, must be full and clear, and not ambiguous.

2. That the words that must qualifie and correct, must be such as do not contain any matter of slander in them.

And 3. Some make a question of such kind of words, where they are subsequent to the Actionable words, and are brought in by the word (And) as you are a Theef, and you have stoln my Apples out of my Orchard; and in this case they argue that they are additional, and cumulative, and shall not correct at all, as they shall when they are brought in by the word For, as you are a Theef, for you have stoln my Apples, &c. But see more of this hereafter. Coo. 4. 19. Hobb. Rep. 97. 381. 406. Stiles Rep. 115. 135. New Book of Entries, 22. 6. Croo. 1. 351. Godb. Rep. 89. Huttons Rep. 65. 109, 110.

For

For the twelfth thing, That the words must be spoken in an extrajudicial way, for if a slander shall be raised and spread only by occasion, and the means of a prosecution, by one that doth but pursue the course of Justice in an ordinary way of Justice, no Action will lye for this, for in this it is held for a rule, That for a Suit, or any other legal procéeding in a course of Justice, if it be not out of malice, and touch not a mans life, no Action will lye; and therefore this Action will not lye against a man for bringing a Writ of Forger of false Deeds, nor for preferring Articles against a man to a Justice of Peace to have the good behaviour against him, nor for the prosecution of a suspected Felon, by indictment as there is cause; and yet if in this case the prosecution shall prove to be malicious, as where an Indictment is preferred against a man for Felony, or the like, and there be not so much as probabilis causa for what is done, and the party be acquitted upon it; he may have this Action, or an Action in the nature of a Conspiracy; for as a Thief may be spared by the favour of Jurors, so an honest man may be much prejudiced in his reputation by such a malicious prosecution, 41, 42. Eliz. Co. B. Sherington versus Ware. See March of slanders, 2. part. 10. Stiles Rep. 335.

That the words be not divulged in a course of Justice.

Forgery.

Conspiracy.

For the thirteenth thing, That the words must be spoken in the hearing of some body that doth understand them, for if words of slander be spoken in Latine, Greek, Welch,

* Page 8.

or

Words of another Language.

or any other Language in the hearing of such persons, as whereof not one amongst them doth understand what they intend, or signifie; no Action will lye upon them. Croo. 1. 65. 144. Hobb. Rep. 63. 276.

For the fourteenth thing, That where a man is charged with a Crime by any such words, and it doth not appear, that he had notice of the ground or occasion of the Crime, in this case no Action will lye for the words; As where one is charged to keep Thæves about him, and it is not said that he knew them to be such, no Action will lye for this. Mich. 40, 41. Eliz.

And thus much for the Rules of Limitation, or Exception.

The Rules that follow are of another nature.

1. That if a man be charged with a Felony by a common fame, Arrested, Imprisoned, or Indicted upon it, and yet he (as he may be) innocent, he may not upon this ground be charged with this Felony, and therefore if any man in this case shall charge him with it, he may by this make himself liable to this Action, for in this case common fame will not excuse him that shall so charge him for this slander. Brownl. Rep. 2. Hobb. Rep. 105, 238. 381. 112. March. 76. 26. H. 8, 9.

2. That if the words spoken be true, let them be what they will, the Defendant may justifie them, and excuse himself; Broo. Action of the Case, 104.

3. That in some cases, the words that are in their first utterance imperfectly and incertainly

tainly ſpoken, and perhaps not Actionable, that theſe words may yet by the pleadings of the Parties, and Verdict of a Jury for the Plaintiff be made certain, and ſo become Actionable. The Pleadings therefore of the parties in theſe Suits muſt be carefully heed-ed, for they may be of great advantage or diſ-advantage to either party.

4. That words relating to a Perſon ought to be underſtood according to the condi-tion of the perſon to whom they are ſpoken; ſo that the ſame words ſpoken to ſome meaner men, that will not bear an Action, yet ſpoken to a more eminent perſon may be Actionable, Croo. 1. laſt publiſht, 192, 193. As to ſay to a Biſhop, or a Judge, or Juſtice of the Peace, or the like man, he is a Vermine in the Com-mon-wealth, or a corrupt man, may be Action-able. See Scandalum Magnatum.

For the better diſcovery, and more clear un-derſtanding of general ambiguous and uncer-tain words, and when they are, or are not acti-onable, theſe things are to be known. Sect. 9.

That the intent and meaning of the Speaker in them is as well to bee heeded (as far as it can be known) as the import of the words themſelves. And for this it is ſaid, It muſt bee heeded, Quo Animo, they are ſpoken, & ſenſus verborum eſt attendendus. Et quæ ad unum ſen-ſum [or, ad unum finem] loquuta ſunt non de-bent ad alium detorqueri. Nor are theſe Actions to be maintained upon mens words by a ſtrained Conſtruction; but where the words in themſelves do import a ſlan-der. And for the better finding out of the ſenſe

of mens words, and their intent in them, this is to be known.

1. That words are not to be taken and understood in a strict and Grammatical sense, or ex ei termini per se, in their natural and proper signification; but in the vulgar and common sense that they are taken in the time when, and the place where they are spoken. For in this the Rule is Loquendum ut vulgus. Intelligendum ut sapiens. And hence it is that the same words that in one Country are actionable, in another Country are not actionable. Coo. 4. 14.

2. They are not to be carried by a forrein Construction besides their most natural likely, and common sense and meaning, into another sense and meaning. Croo. 1. 352.

3. The cause, or occasion of the speaking of them is to be considered according to the Rule, Sensus verborum sumendus ex causâ dicendi. For upon this difference it is, That the same words that will bear an Action in one case, will not bear an Action in another case. And words that in themselves will bear an Action, yet considered ex causa dicendi, will not bear an Action. And therefore if one say of another, That hee is a Bastard, when this is to defend his own title, where he himself doth claim to be heir to the Land, that is now in question, or like to be in question. Or say of another, That hee hath forsworn himself, where it is in a case wherein hee hath taken his Oath against him, or where a Lawyer in the pleading of his Clients Cause, shall utter words accor-

Bastardy.

Perjury.

cording to his Inſtructions pertinently to the Cauſe, or a man ſhall in an orderly courſe of Juſtice utter ſuch words as otherwiſe would be ſcandalous; In theſe, and ſuch like Caſes as theſe, no Action will lye for words ſo ſpoken; albeit they be otherwiſe in themſelves actionable. Croo. 2. 90, 91. Coo. 4. 13, 14, 16. March. pl. 45.

4. The words muſt be conſidered by all the reſt of the words ſpoken together with them at the ſame time. And they are to be taken ſecundum ſubjectam materiam, & conjunctim uno halitu, and not by a part of them rent aſunder from the reſt; And therefore if one be talking about a Iuoge, Attorney, or other ſuch like Officer about his office, and in this diſcourſe ſay, Hee is known to be a corrupt man, and to deal corruptly; this will bear an Action. But if the diſcourſe be about his dealings as a Uſurer, or as an Executor in the performance of a Truſt committed to him by a Will, there the words will not be actionable. So if two be talking together of Hunting, and one of them confeſſeth that hee doth kill Hares with Engines, and thereupon the other doth ſay of him, That hee is a Murtherer. So if one ſay of mee, Hee is a Traitor, for I truſted him to buy Land for mee, and he bought it for himſelf. So if hee ſay, I robbed him, for I took away his evidences, and a ſubpena. In theſe, and ſuch like caſes no Action will lye for the words. Coo. 4. 16. 19. Browl. 7. and 2. Godb. Rep. 89. Lievre de Entries 22. 6.

Corruption in an office.

Murder. Treaſon.

5. But

5. But where the ſenſe is double, and indifferent, that it may be taken the one, or the other way. But one of the ſenſes is worſe, and the other is better; there the words ſhall bee taken in the better, and not in the worſer ſenſe. But of this ſee before.

6. That where the ſenſe of the words is general, and may be taken divers wayes, there it ſhall bee underſtood with reference to the perſon of whom they are ſpoken. For in this the Rule is, Sermo relatus ad perſonam intelligi debet de Conditione perſonæ. And thus the ſame words ſpoken to one man, may be, and ſpoken to another man, may not be actionable. To ſay to a Judge, or ſuch like Officer, You are a corrupt man, is actionable. But ſuch words to another man are not actionable. Coo. 4. 16.

And yet if in this caſe, there be other words ſpoken together with theſe words, that do manifeſt them not to bee intended with reference to his office, but to ſome other thing, the words will not be actionable. Coo. 4. 16. Hetleys Rep. 123. 139.

Wee have toucht it before, That Slander is, and may bee by word, or by deed. And by word it may be either of the title a man hath to his Land; or of his Perſon. Wee ſhall firſt of all lay down ſomething of the firſt of the ſlander of titles; and then wee ſhall enter upon the ſlander of perſons. As to which it may bee eaſily diſcovered by that which is laid down in the general foregoing Rules; That in this ſubject wee are upon, theſe things are principally to bee conſidered. 1. The

1. The Person of the Slanderer.
2. The Person of the Slandered.
3. The way and manner of divulging of the Slander.
4. The frame of the words, whereby the Slander is raised and made.
5. The matter and quality of the slander it self. We shall therefore after we have dispatcht the first, and after we have spoken a little to the Slander of great men, called Scandalum Magnatum, in the next place say something to every one of these particulars.

CHAP. III.

Of the Slander of a Title to Land.

Words that tend to the slander of a mans title to his Land; or to a mans disinheritance. Sect. 1.

THere are some words spoken that are in scandal and disparagement of a mans Title to his Land, or tend to a mans disheritance, for which an Action of the Case may lye. And for the opening of this point, these things are to be known. That in all cases where an Action will lye for a Slander of this nature there must be these things in the Case.

1. The words must be spoken about such Land, as wherein I that am to bring the Action, have some title of Estate, or at least a possibility, or probability of Estate or Title in Possession, Remainder or Reversion. For if they bee spoken about Land that doth not concern mee, and wherewith I have not to do, they cannot as they refer to the Land be actionable.

2. The words spoken must be false; For if what is said bee true, bee it what it will, the speaker may justifie the speaking of it where an Action is brought against him for it.

3. They must be spoken by one, that neither hath, nor pretendeth title to the Land himself, and that is not of Counsel with him that hath or pretended title to it.

For if a man lay claim to Land that another hath in possession, or to which hee doth pretend title, as next heir, or otherwise. And hee shall say any such words as these, That the Land is his Land that claimeth it, and not the others; or that hee hath a good title to it, and the other hath no title to it; or, that hee hath such an Estate in it; or, such a conveyance of it, if in truth hee have such a conveyance of it, and if it bee true, as hee saith, no Action will lye for it. So if they both claim as heir, and the one of them say of the other, That hee is a Bastard; or, that hee is not the rightful heir; or, that his Father was an Alien, or the like; and that hee himself is the heir. And so if the Counsel of such a man shall use any such words as these in the agitation of his Cause about the Lands, these words will not be actionable. And yet if a man shall pretend title to the Land another hath in possession, and hath no colour of title for it. And say, hee hath such a deed or conveyance of it, where in truth hee hath no such deed, or conveyance at all; or, if hee hath any such, it is a counterfeit, and a forged one, and hee knoweth it to be so; in these Cases the words may be actionable. But

if

if there be any colour for what is said, the words will not be actionable. Coo. 4. 17, 18. Yelvertons Rep. 80. 88. New Book of Entries, 20. 28. Trin. 25. Eliz. B. R. Banisters Case. Mich. 3. Jac. B. R. Croo. 2. 339.

4. The party that brings the Action must have, or be likely to have some special damage by the speaking of the words; as that he is hindred in the sale of his Land, was forced to fall his price, or in his preferment in marriage, or the like, by it. And therefore where a man is not about the sale of his Land, or about a match with a Wife or Husband, and another shall speak words to the disparagement of the title of his Land; this will not bear an Action. But if by the speaking of the words he hath lost his Chapman, or otherwise suffered any special prejudice (the which he must not fail to set forth in his Declaration) there without question the Action will lye. Croo. 1. 99. 100. Croo. 2. 213. 397. 422. 484. Croo. 2. 642. 337. Owens Rep. 32. Popham. Rep. 187. Yelvertons Rep. 88. Bulstr. 2. part. 90.

5. That where the words are spoken to the prejudice of his Inheritance, as where he is denied to be rightful Heir, or the like, there the Action may be maintainable without Averment of any present damage, and therefore it is held that this Action will lye, for saying of a lawful Heir to Land, before or after the Ancestors death, Hee is a Bastard; and so albeit the words be spoken before, or after he hath Land in possession, and though he be not about to sell the Land, and although Averment.

he have no special loss by the speaking of the words, for by this the King, or other Lord may be moved to search after the Title, and the Title of his Land (if he have any) may be called in question, and so it may in time turn to his prejudice, Coo. 4. 17. Croo. 2. 642. M. 20. Jac. B. R. Elborrows Case.

x 6. That this Action will not lye for words that are too general and incertain, nor for words that are not malicious, sufficiently positive, and the like, within the Rules of words spoken in other cases; for if they be incertain, of a double intendment, doubtful meaning, or the like, no Action will lye upon them.

Sect. 2. It is therefore agréed, That if I have Land, and am about the sale of it, in treaty with another, or about to settle it on a Marriage, and one that hath nothing to do with it, or makes no title to it shall say, That I have no title to the Land, or, I have no right to it, or, I can make no good estate of the Land, or, that it is anothers Land, or, that another hath such an estate in it, and set forth such a one as will disable the estate that I am now about to make, this is Actionable. As if I bé a Copy-holder for life, of Land in a Mannour, and the Lord is making a Lease of it, after my life, and is bid five hundred pound for it, and I shall say, I have a Lease for years of it after my life, made by a former Lord, this will be Actionable, Coo. 4. 18. Croo. 2. 397. 337. Owens Rep. 32. Pophams

hams Rep. 187. Croo. 2. 163. Yelvertons Rep. 88. Croo. 1. 99. But if it be ſo, that I have only a purpoſe to ſell it, or to ſettle it upon Children, and any man ſpeak ſuch words about it, this will not bear Action, Croo. 2. 397. 337. 444. Pophams Rep. 187. Owens Rep. 32. Croo. 1. 99.

And if one that claims this Land as his own, ſhall ſay, It is my Land, or, I have a Leaſe of it; or, the other hath no eſtate in it, or, hath no right to it, or the like, this is not Actionable, Coo. 4. 18. So if I pretend Title to Land as Heir, and another claims it as Heir, and I ſay, Hee is a Baſtard, and I am next Heir, this is not Actionable, Coo. 4. 17. Yelvertons Rep. 80, 88.

And if a Counſellor ſhall ſay, That his Client hath the better right to the Land, or ſhall uſe other words in the courſe of his pleading pertinent and neceſſary to be ſaid in order to the advance of the cauſe, no Action will lye for this, Coo. 4. 17. Trin. 25. Eliz. B. R. Baniſters caſe. If I have a Copy-hold of Inheritance within the juriſdiction of the Court of another, and he ſaith, That I have not any Title to thoſe Lands, if by this I have no ſpecial prejudice, no Action will lye for it, Croo. 1. 99. and yet if ſuch a one that hath no Title to, nor eſtate in it himſelf, ſhall ſay, that another hath an eſtate in it, or title to it, who hath no good, but hath a colourable eſtate or title in it, this will be Actionable, ſo it is to ſay in ſuch a caſe, I know one that hath a Leaſe of the Land, and hee will not part from it at any

rate. Mich. 37. 38. Eliz. B. R. Pennimans Case. Mich. 20. Jac. Elborrows Case. Croo. 1. 99, 100. Croo. 2. 397, 422, 642. Croo. 4. 17. Coo. 1. 175.

And if two have Leases of the same Land, and hee that hath the last Lease, which is not good, shall say, That the Land is his, and the others estate is not good; this is actionable. Coo. 1. 175. Coo. 4. 18.

And if I be about to sell my Land, and J. S. shall pretend to, and shew a Lease of it, and it is counterfeit, and hee know it to be so, this is actionable. Coo. 4. 18.

So if a woman shall publish a Lease of the Land of another, as made by her Husband, and shall know it to be forged; if by it the party have any special loss; hee may have this action. Coo. 4. 18.

So if I bee about to sell my Land, and another man shall say, the Land is conveyed to J. S. and is his Land, or that hee hath a Lease of it for years, or the like; this is actionable. And so it is, albeit there be a conveyance or Lease made to J. S. in truth, if it bee not a good Conveyance or Lease in Law. Coo. 1. 175. Coo. 4. 18.

Maidmay. case.

But for these words, I had rather to buy the title of the younger Brother, than of the elder Brother, and the Plaintiff; and that hee had seen an Indenture to lead the uses of a Fine, whereby it did appear that the Plaintiff had no authority to sell the Land; no Action will lye. Crush vers. Crush. M. 3. Jac. B. R.

And

And ſo it hath béen agréed, That an Action will lye in the Caſes following. As I have Land as Son and Heir of J. S. and another ſhall ſay of mée, I am a Baſtard, if by this I ſuffer any ſpecial préjudice, there is no doubt I may have this Action againſt him. Croo. 2. 642. To ſay a man is a Baſtard, & not a rightful Heir to Land.

And if I bée Heir apparent to my Anceſtor, who intends to ſettle his Land upon mée, and by occaſion of theſe words, hée doth give it away from mée; I may have this Action againſt him that ſpeaketh the words. Croo. 2. 642. Croo. 2. 213. Godb. Rep. 421, 451. pl. 519. Bulſtr. 2. part 90. Baſtardy.

May it ſéems the Law is, That if one ſhall ſay of mée, that I am a Baſtard; albeit I do not claim any Inheritance, or to be Heir to any one perſon in certain, and albeit I have not any préſent or ſpecial damage by it; yet that theſe words are actionable. Croo. 2. 642. Croo. 2. 213. Godb. Rep. 421, 451. pl. 519. Bulſtr. 2. part 90.

And if I have but a remote poſſibility of Land, as where an entail is of Land on my Father, and the Heirs of his body, whereof I am the youngeſt of many, and hée is about the ſale of this Land, and I am bid mony for this poſſibility, and then one ſhall ſay of mée, I am a Baſtard, and after that the Purchaſer refuſe to give mée any thing; for my poſſibility in this caſe I may have this Action againſt him for it. Croo. 2. 213. Godb. Rep. 421, 451. pl. 519.

CHAP. IV.

Of the Scandalum Magnatum.

Scandalum Magnatum. What. Sect. 1.

SCandalum Magnatum, is a wrong done to some eminent person of the Land, as Duke, Earl, Baron, Chancellour, Treasurer, Privy-Seal, Justice of the one Bench, or of the other, by false news, or false messages, whereby debates and discords betwæn them, or any scandal to their persons may arise, Stat. 2. R. 2. chap. 5. Westm. 1. chap. 34.

The punishment of it.

In this Case the party defamed may have his Action in the name of the King, and his own Name upon the Stat. of 2. R. 2. And hereby shall recover damages for the wrong, and the party may also be otherwise punished. And if the slander be divulged in the nature of a Libel, it is punishable by Indictment; and great Fines are imposed for this offence, for that the reproach of such persons is the reproach of the King and State it self. Coo. 5. 125. Old Book of Entries. 593. Crompton. Jur. 35. 19. 13.

For and against whom, and where this Action will lye or not.

For the knowledge of this, wherein this Action is given to a great man, for such a wrong these things are to bæ known.

1. That the King is within the Statute of Westm. cap. 34. but not within the Statute of 2. R. 2. cap. 5. and 12. R. 2. cap. 12. Dyer. 155.

2. That the persons that are to have this Writ, are declared to be Prelates, Dukes, Earls,

Earls, Barons, and other Nobles and Grandees of the Realm, and also the Chancellour; Treasurer, Clerk of the Privy-Seal, Lord Guardian of the Cinque Ports, and of the Kings Privy-Council, Steward of the Kings Houshold, Justice of the one, and of the other Bench; and other the great Officers of the Realm, 2. R. 2. cap. 5. Westm. 1. 34. Dyer. 155. in Hetleys Rep. 55.

3. That for this, it matters not for the manner of contrivance or publication of it, which way the words or reports be published, either by speech or writing; either spoken or written from a mans own knowledge, and from himself, or by the report of another. And by writing either delivered to the party himself, or to another, or hanged up in any open place, or by Libels, or by any other extrajudicial way whatsoever. See in Hetley. Rep. 55. How this slander may be contrived and published.

But this lyeth not against any man for any thing done by him in a judicial way, as for bringing a Writ, or for having a Suit, for forging of deeds, or other Cause in a legal way, or for preferring and prosecuting of a Legal Indictment, or an Appeal of Murder, Robbery, or the like offence, albeit the Charge be false; And whiles the Starr-Chamber-Court was in being, a Bill might have been brought against any such great man for any thing whereof the Court had Connusance as against another, but for preferring any Charge in that Court for any thing whereof the Court had not Connusance, a man might have had this Action; Or for a

Conspiracy

Conſpiracy to indict ſuch a man, the Defendant or party indicted, may have the ſame remedy againſt the Plaintiff, and Conſpirators, as another man may have. Crompt. Jur. 13. Coo. 2. part Inſt. 228. Coo. 4. 14. Fitz. Diſceit. 35. Dyer. 285. Kelw. 27. in Hetley Rep. 55.

For what this Action may be laid; Or not. Sect. 2.

4. For the matter and Quality of this Slander, take this. That the words or rumours uttered againſt great men, for which this Action is given.

1. Muſt be falſe and horrible.

2. Such as by which diſcord or ſlander may ariſe betwæn the King and his people, or the Grandæs of the Realm. Weſtm. 2. cap. 24. Or betwæn the Lords and Commons. 2. R. 3. cap. 53. by which great peril and miſchief may come to all the Realm.

3. Such as tend to the deſtruction of the Realm. Coo. 12. 134.

× And if any do hear, or ſhall hear any ſuch words by the report of another, it will not be ſafe for him to report them again. Coo. 12. 136.

× It hath bæn adjudged and reſolved for the words uttered, as in the Caſes following, viz. For ſaying, Thy Lord is a Traitor, and I will prove him a Traitor, Vicount Sayes Caſe. In Leyes Rep. 82. Croo. 1. 96. And for this, My Lord of Wincheſter ſent for mee and impriſoned mee till I entred into bond of twenty pound to the Kings uſe. The Biſhop of Wincheſters Caſe. Croo. 1. laſt publiſht. See it in Leonard, Rep. 336. 2. H. 8.

Twenty pound

× So for ſaying, My Lord is a baſe Earl, and

a

a paultry Lord, and keepeth none but Rogues and Raſcals like himſelf. Earl of Lincolns Caſe. Trin. 5. Jac. B. R. Yet ſee Croo. Rep. 2. 196.

So for ſaying, You bring in Jeſuits and Pa- + piſts into the Realm, &c. Earl of Northamptons Caſe. Coo. 12. 136.

So for ſaying, You maintain ſedition againſt the Kings proceedings; **Or,** you uphold and countenance them that do ſo. Coo. 4. 13.

So for this, You are a Traitor to your Prince, or Rebel againſt him, Lord Monteagles Caſe. M. 9. Jac. B. R.

So for this, It is your grief that you are a ſubject. County of Salops Caſe. M. 40. & 41. Eliz. B. R.

So for this, You charged them that tranſport, or import Merchandizes to or from ſuch a place, that they ſhould not pay cuſtom for it, nor ſuffer the cuſtomers to ſearch them, Old Book of Entries, 593.

So for this, You have no more conſcience than x a Dog; ſo you have goods, you care not how you come by them. Duke of Buckinghams Caſe. M. 4. H. 8. Rot. 659. **Or to** a Chief Juſtice, You are a Corrupt Judge. Cromp. Jur. 35.

So for this, You ſaid you would wind my guts about your neck; Lord Abergavenie's Caſe. Cromp. Jur. 13.

So alſo it is thought of theſe words, You x are uſed to do things againſt Law, to impound the Subjects beaſts, and keep them in a Caſtle that they cannot be replevied; **but to ſay that hee did ſo once, will not bear an Action.** Duke of Buckinghams Caſe. **So**

So for this, You have sent Commissioners to spoil the Country, where he sent Commissioners to make Leases of his Land, and improve his Rents. Duke of Buckinghams Case.

So for this, My Lord of Abergavenie sent for us, and put some of us in the stocks, sent some of us into the Goal, and put some of us into the house called little Ease. Hill. 19. Eliz. the Lord Abergavenies Case. See it in Croo. 1. last publisht. 192. and Leonards Rep. 336.

And so generally, of any words spoken of an ordinary man, that will give him an Action, being spoken to such an eminent person, will much more give him this Action. Coo. 12. 132, 134. Leys Rep. 32.

X But it is said, It will not lye in these Cases, and for these words following, viz. The Earl of Lincolns men by his commandment did take the goods of one Hoskins by a forged warrant, because it was not said, he knew the Warrant to be forged, Goldsb. 115. See more of this Subject. Leys Rep. 82.

In the Case of the Earl of Northampton. Mich. 10. Jac. B. R. It was (as it is said) amongst other things resolved in the Starr-Chamber.

1. That the publishing of false Rumours, either concerning the King, or of the high Grandees of the Realm may in some Cases be punished by the Common Law. So as

1. The words and rumours be false and horrible; by which discord or slander may arise betwixt the King and his People, or the Gran-

Grandées of the Realm. Weſt. 2. cap. 24. or between the Lords and Commons, 2. R. 2. cap. 53. by which great peril and miſchief may come to all the Realm.

2. The perſons againſt whom the words be ſpoken, muſt be Prelates, Dukes, Earls, Barons, and other Grandées, and Nobles of the Realm, and alſo the Chancellour, Treaſurer, Clerk of the Privy-Seal, Steward of the Kings houſhold, Juſtice of the one, and of the other Bench. 2. R. 2. cap. 5. Weſtm. 1. 34. Dyer. 5.

2. It was reſolved, that if one hear ſuch falſe and horrible rumours either of the King, or of the ſaid Grandées, it is not lawful for him to relate to others, that hée hath heard J. S. to ſay ſuch falſe and horrible words, for if it ſhould, by this means it may be publiſhed generally, &c.

3. It was reſolved, That if A. ſay to B. Did you not hear that C. is guilty of Treaſon, &c. this is tant-amount to a ſcandalous publication. And in a private Action for Slander of a common perſon. If J. S. publiſh that hee hath heard J. N. ſay, that I. G. was a Traitor, in an Action of the Caſe, if the truth be ſo, hée may juſtifie it. But if J. S. publiſh generally, without a certain Author, that J. G. was a Traitor, there an Action of the Caſe lieth againſt J. S. for that hée hath not given to the Plaintiff any cauſe of Action againſt any but againſt himſelf, who publiſhed the words, albeit hée might hear ſuch a report, for otherwiſe this might tend to the great Slander of an innocent, it coming

firſt

first from a mans mouth of no credit, and being after in the mouths of persons of credit, &c.

4. It was resolved, That the Judgement in an Indictment upon the said Statutes, when the words are spoken generally, without Relation to a certain Author, is that the Offender shall be fined and imprisoned. Also the party grieved may have an Action de Scandalo Magnatum, and recover his damages. Coo. 12, 133, 134.

CHAP. V.

Of Actions for Slanders of all kinds.

Where it lyeth, and what words will bear this Action; or not.

IN all Cases where this Action of the Case for the Slander of a common person, shall be maintainable (as hath been before touched) there must be these things in the Case.

As to the manner, contrivance, & publication of the slander.

1. The Slander must be published and contrived.

2. It must be so published and contrived, that there may be a certainty in it.

1. As to the persons of the Slanderer, and Slanderer.

2. As to the manner of the utterance of the words, and charge of the Slander.

3. And as to the thing wherein the Slander lyes, the which also must bee such a thing, as for which the Law doth give this Action.

For the manner of contrivance of the slander.

And for the first of these as to the manner of Publication and Contrivance of the Slander, take these things.

Sect. 1. Words in a certificate.

1. If a Minister in a Certificate to his Ordinary

dinary, wherein hee is bound to certifie other matter, shall insert scandalous matter, this is actionable. Reads Case. M. 7. Jac. B. R.

In a Libel.

2. A Libel may have and contain such matter in it as may give advantage to the party slandered by it, to bring this Action, and therefore to write a Libel of Slander in Paper, and affix it to the Church-door, men going to the Church, is actionable. 17. Ed. 4. 3. lib. 13. sect. 4.

In a Letter.

3. To write a Letter in private sealed, wherein is matter of Slander, is actionable. And yet if the Writer shall deliver it to him who is slandered in his own hands, perhaps it may be otherwise. Hobb. Rep. 93. M. 9. Jac. B. R. In the Lord Lumly, and Hoods Case, It was agreed, That where Ford in a Letter written by him had written, It is reported the Lord Lumley seeketh my life; and in truth it was not reported, this is actionable. Leonard. 187. Bulstr. 3. Rep. 225.

4. To speak the words in a mans ear, and bid him keep counsel, is actionable. M. 9. Jac. B. R. Hob. Rep. pl. 63.

Words uttered by a Counsellor in pleading.

5. If a Counsellor give in evidence, and enforce any thing in his Instructions for his Client against his Adversary, or against the Testimony of a witness, albeit it be false, if it be pertinent to the Case in question, which hee must look to, this is not actionable. But if it be not pertinent to the issue, or matter in question, it will be his wisdom to forbear it, for if not true, or if true, and not pertinent, hee may be sued for it in this Action. So

if

if hée shall speak the words at another time, and in another place, Mich. 31. Jac. B. R. Brook Versus Mountague. And if the slander be by this information of his Client, the Client may be charged in this Action for a slander thus published. Croo. 9. 90. And yet by Glin. ch. Just. B. R. It was said, That if a Counsellor speak scandalous words against one in the defence of his Clients Cause, no Action will lye for this; for hée doth but his duty, and it shall bée intended to bée spoken according to his Clients Instructions. Styles Rep. 462.

x

By way of Indictment.

5. If the Slander be contrived by way of Indictment, Articles exhibited to procure one to be bound to the Good Behaviour, or otherwise in a course of Justice, it may be actionable: But for this know, That this Action will not lye for any thing that is said, that may reflect upon another, if it bée said or done in a way of Justice, without any malicious intent. As where a Defendant in a Spiritual Court amongst exceptions put in against the Plaintiffs witnesses, one of them is, that such a one of them was perjured; so if one bring another before a Justice upon a suspition of Felony that is false. And where one doth exhibit a scandalous Bill in a Court that hath Jurisdiction of the Things, and they be false; or a man in pleading say, such a man was Bankrupt, and so hée seized his goods under a Commission and the like. So where a witness doth give in evidence only. So for indicting a man for Felony, where there is ground for it, al-

Bankrupt.

although it be falſe; So for ſuing of a Writ of Forgery of a falſe deed; ſo for to make a falſe Affidavit in Chancery, by which a man is impriſoned; So for to put a ſlanderous complaint into the hand of a Member of Parliament, no Action will lye for any of theſe things. Noys Rep. 116. In Godb. Rep. pl. 333. Kelw. 26. Dyer. 2. Coo. 4. 14. Paſch. 3. Jac. B. R. Marſham Verſus Peſcod. Croo. 1. part laſt publiſht. 230. 247. Dyer. 285.

Sect. 5.

In a Court of Juſtice.

But if a man ſhall ſo accuſe a man in a Court, that hath not juriſdiction of the thing whereof the party is accuſed, or inſert other things amongſt things wherein it hath juriſdiction, or ſpeak of other matters, which do not concern himſelf, but others with which hee hath nothing to do; As when the Star-Chamber ſtood, if one had charged another perſon, a ſtranger, with matter of ſlander; Or had charged another there in a Bill of Piracy, Murther, or the like, wherewith the Court had not Juriſdiction, as Sir Richard Buckly was charged by a Bill in the Star-Chamber to be a maintainer of Pirates, Theeves and Murtherers, and a Procurer of Pirates, and for this the Action was adjudged to lye, for that Court had not Conuſance of theſe things. Coo. 4. 14. Croo. 1. laſt publiſht. 230. 247. So alſo if one having a Bill in there againſt a Judge for Corruption, or the like, and hee had gone about and divulged what was in the Bill to others to ſcandal the party; this had been actionable. Trin. 116. Car. B. R. Vaſt. Crooks Caſe.

So if a Juſtice of Peace ſent his Warrant to

arrest a man pretended by the Justice to be accused before him for the stealing of the horse of J. S. the party is arrested and kept in Prison, till hee give bond to answer it, and in truth the man was not accused, nor had the Justice any ground for it; this is actionable adjudged. But if in truth hee had been accused, albeit it had been false. Contra Trin. 3. Eliz. B. R. Windhams Case. Leonard. Rep. 187.

Theft.

Theft. If I have lost goods, and I suspect a man for it on some ground, and I go to a Justice for a Warrant against him, and hee say, take heed what you do, and thereupon I say I will charge him with the stealing of my goods; this is not actionable adjudged. Hatton. Rep. 113.

But if a Felony be done, and the rumour fained is, that A. did it, and thereupon B. doth inform a Justice of the Report, and before the Justice, or elsewhere shall positively affirm, that A. did this Felony; this may be actionable. For albeit one may charge a man with a Felony, or arrest a man for it in such a Case of suspition, yet hee may not thereupon affirm that hee did it, for he may be innocent all this while. Hobb. Rep. pl. 238. 103. 381. 112. 105.

Or if one shall begin to charge another in the right place, and then prosecute it elsewhere out of course, there the Action may lye. So if hee do or say more than is necessary in the right rode of Justice. As if I be robbed, and J. S. is suspected by the common report; now I may have him arrested, and prosecute him

Robbery.

him for it; But if I shall report and affirm that J. S. hath robbed me, I may be liable to his Action; So where I have duly indicted a man upon a suspition of Felony, and I shall after tell of it boastingly in Alehouses, and report of him, that he hath done the Felony whereof he is suspected, or had preferred a Bill in the Star-Chamber of scandalous matter, and had after gone and reported the thing in an Ale-house, or the like. Croo. 1. last publisht. 230. 247.

So if one shall indict or charge another legally for Felony, where there is no ground of it at all, nor any colour of guilt about him. So where a witness shall go beyond the issue, or point in issue, and slandereth a third person, an Action will lye for this. Croo. 1. part last publisht. 230. 247.

By way of Indictment.

6. A Bill of Indictment was falsly and maliciously without any colour of guilt preferred by one to a Grand Jury against another for a Rape, and an Ignoramus found by the Jury; this is actionable adjudged, and affirmed in Error. Hill. 10. Jac. B. R. Horewoods Case. Jenk. Cent. 7. Case 64. 40. Dyer. 285. Winches. Rep. 28. 54. Marches Rep. 76. pl. 119. Stiles Rep. 335. See in March. of Slanders. 2. part. 10.

Conspiracy.

And if there be malice and conspiracy in a Course of Justice, to take away my life, I may be relieved by this in some cases by an Action of the Case for a Conspiracy. 27. H. 8. 11. See after.

7. Mich. 28. 29. Eliz. B. R. Stanley versus Cur-

Curſon, One was brought in by ſubpena ad teſtificandum, and upon his oath, uttered matter of Infamy againſt the Plaintiff; and it was ſaid no Action would lye for this. Croo. 1. part laſt publiſht. 230. 247. 248.

8. A. Exhibited Articles to have the good behaviour againſt B. and took his oath before a Maſter of the Chancery, after hee ceaſed his proſecution there, and did get a Supplicavit out of the Kings Bench, to have the good behaviour there.

In this Caſe it was reſolved, that the Action did lye. But had hee proſecuted in the Chancery, although the Articles had been ſcandalous no Action would lye, for a man ſhall not be puniſhed for miſtaking the Law, for hee may be miſadviſed by his Council. Brownl. 4. Mich. 27. 28. Eliz. B. R. Tuthill. verſus Osborne.

2. As to the perſons of the Slanderer, and the Slandered, who may have this Action, and againſt whom.

Alien. Sect. 3. An Alien born under a King in Amity with our King, may have this Action. If therefore ſuch an Alien Merchant who traveth here be called Bankrupt, hee may have this Action againſt him that ſo called him. Bulſtr. 1. part 134. Yelvertons Rep. 198.

If one man ſlander two men at one time, they may not joyn in one Action, but muſt have ſeveral Actions for this ſlander. Paſche. 1650. Croo. 1. 368. Dyer. 19. Goldsb. 76. Marches Rep. pl. 249. So if two men do ſlander one man, hee muſt ſue them ſeverally, and may not

not ſue them joyntly for this ſlander. M. 20. Jac. Chamberlains Caſe. 2. H. 7. 16.

If the wife ſlander, the Husband and Wife may and muſt be ſued for this, and the Wife may not be ſued alone for it. But for ſlanderous words ſpoken both of a man and his wife; the husband may ſue one Action alone for his own ſlander, and hée and his wife may after ſue another Action for the ſlander of his wife. And ſo for any ſlander of the wife alone, the husband and wife muſt ſue; or perhaps the husband may ſue alone, but it is ſafe to joyn his wife with him. In Styles Rep. 113. Trin. 14. Car. 1. B. R. Styles Rep. 361. Husband and Wife.

If two have an office joyntly, and a ſlander be of one of them in relation to his office, hée may have this Action, and hée muſt bring it alone. Winch. 21. Rep. 40. Officer.

If one ſay of a Jury, All the Jury is perjured, Every Juror may have this Action againſt him, and they muſt ſue aſunder, and not together. Mich. 7. Jac. Co. B. Deacons Caſe. Perjury.

If the declaration be laid, that the Defendant dixit the words, and it ſay not de Querente, it is naught, for now it appears not how the words were uttered. Stiles Rep. 70.

If the declaration be, hée ſpake theſe words of the Plaintiff, Thou art a Theef, in the ſecond perſon, it is good enough; for to ſay, de præfat. or, ad præfatum, is all one. So to ſay to a mans face, Hee is a Theef, is actionable. Croo. 2. 39. Bulſtr. 1. part 5650. Brownl. and Goldsb. 5.

Theft. To ſay of A. B. Thou art a Theef, behind his back, or, hee is a Theef, to his face. And where two be ſpeaking of A. B. and one of them ſay, Hee is a Theef; this may be reduced to a certainty, and ſo be actionable. Coo. 4. 17. For uncertain words may be made certain by reference. Id certum eſt quod certum reddi poteſt. Hobb. Rep. pl. 119. In Godb. Rep. 391.

Certainty.

× Father and Son. To ſay to the Father, Thy Son J. S. or, thy Son J. is a Theef; if hee have but one Son, and it is ſo averred, is no doubt actionable. Croo. 2. 635. March. Rep. pl. 96. So to ſay to the Son, Thy Father is a Theef. Croo. 2. 635. 1. 635. And this needs no Averment. Bulſtr. 3. 72. And yet it was adjudged to lye for this, your Son Innuendo your Son William J. ſtole a horſe, and ſold him for ten pounds. Stiles Rep. 46.

Theft.

× But to ſay without any precedent communication of any perſon incertain, one of the Sons of J. S. is a Theef; and J. S. have more Sons than one, is utterly incertain, and not actionable. Coo. 4. 17. Croo. 1. 127. Hobb. pl. 351. Bendloes. 134.

Husband and Wife. Theft. To ſay to the Wife, Thy Husband is a Theef; or, to ſay to the Husband, Thy Wife is a Theef, is no doubt actionable. Croo. 2. 635. Bulſtr. 3. 226.

Maſter and Servant. Theft. To ſay to the Servant, Thy Maſter is a Theef, is without doubt actionable. Croo. 1. 127. and 2. 443. 635. Hobb. 351. 371. Leonard. Rep. 335.

This Action will lye for ſaying, Thou ſerveſt no true ſubject. And here an Innuendo. J. S. ſuch

ſuch a man, will make it certain. Croo. 1. laſt publiſht. 192, 193.

But to ſay without any precedent communication of a perſon incertain. One of the Servants of J. S. (if hée have more ſervants than one) is a Theef, is utterly incertain, and therefore not actionable. Coo. 4. 17. Croo. 127. Hobb. Rep. pl. 331. Bendloes Rep. 134. Croo. 2. 443. But if hée have but one ſervant, and it be laid to be ſpoken of him, it may be certain enough, and actionable. Brownl. and Goldsb. 2. Brownl. 1. part. 7. 9. 10. 13. Hobb. Rep. 351. 371.

To ſay to a woman, Thy Husband & his Maſter ſtole my Horſe, will not give Action to any one as his Maſter, but it may give Action to her Husband. But if hée ſay, Thy Husband and his Maſter J. S. ſtole my Horſe; this will give the Action to J. S. alſo, if J. S. were then re vera his Maſter. Bulſtrode. 2. part 82. Theft.

To ſay to A. B. Thy Brother C. B. is a Theef, is without doubt actionable. So to ſay, Thy Brother, without more, if hée have but one Brother, & it be ſaid to be ſpoken of him. But to ſay without any precedent communication of a perſon incertain, One of the Brothers of J. S. is a Theef, and J. S. hath many Brothers, is utterly incertain, and not actionable. Coo. 4. 17. Croo. 1. 127. Hobb. Rep. pl. 331. Bendloes Rep. 134. Hobb. Rep. 351. 371. So for one that hath more Brothers than one, One of my Brothers is a Theef. Bulſtr. 3. 226. And yet to ſay to A. Thy Brother is a Theef, and hée hath but one Brother, which is B. in this caſe Brother. Theft.

Averment. B. may have this Action, but then he must aver himself to be his only Brother; and therefore it was adjudged not to lye for these words spoken to the Father, thy Son [Innuendo the Plaintiff] hath murthered my child, Murder. because it was not averred that the speech was about the Plaintiff, or that he was his only Son. Croo. 2. 635. March. Rep. pl. 96. And Averment. yet see Brownl. 4. and Croo. 107. where for saying, My Brother is perjured, upon not guilty, pleaded, it was found for the Plaintiff, and said to be well laid without any averment, and that it shall be now intended, he had no other Brother.

Sect. 4. X To say, That one that is neer to J. S. [or one that is about J. S.] or one that is mine Adversary, or one of you three (where there Theef. are three in the company) is a Theef, or one of you two (where there are but two in the company) is a Theef. These words are utterly incertain, and not actionable. Yet if in the first case it may appear by Averment, that such a one was then his enemy, and he had no other enemy, it may happily lye, Coo. 4. 331. 17. Croo. 1. part last publisht. 497. Croo. 1. 127. Hobb. Rep. pl. Bendloes Rep. 134. So to say to three that have given in evidence, one of you three is perjured, Croo. Rep. 1. last publisht. 496. 497. and his fellows are Theeves; this can be certain for none but the first, & no other person but him may have an Action for these words. Stiles Rep. 247. Croo. 1. part 127. Hobb. Rep. 351. So to say, One I. S. stole the Horse that is lost, is altogether incertain, and not action-

actionable, Mich. 7. Jac. B. R. Reads Caſe. But, to ſay of a man there preſent, this man is a Theef, is certain enough, and actionable, Brownl. and Goldsb. 2.

To ſay of two others of one Sirname Jones, and the one of them ſay to the other, Theſe Jone-ſes are Theeves, this may be certain enough, and ſo actionable; But if the words be, The Jone-ſes are Theeves; The Caſe will be more doubtful. Godb. Rep. 391. 344. Theft.

If a ſpæch be about a Suit that is betwæn A. and B. and ſix others defendants, and in this ſpæch the defendant is charged to ſay, Theſe defendants Innuendo, B. the Plaintiff, and the others, are thoſe that did help to murder J. S. this is certain enough, and all of them it was agræd might have Action upon it. Murther.

To ſay, The Parſon of Dale is a Theef, may be certain, and bear Action with an Averment that hæ that ſues was then Parſon of Dale, when the words were ſpoken. Per Juſt. Doddridge. Mich. 14. Jac. B. R. Bulſtr. Rep. 3. 326. Theft. X

To ſay, That murdrous Knave Stroughton lay in wait to murder me, and after not guilty pleaded in an Action brought by Thomas Stroughton, and verdict for him, hath bæn adjudged actionable. As was ſaid in Croo. 2. 101. Murther.

To ſay, that one Stamford (leaving out his Chriſtned name) ſtole my Horſe, is altogether incertain and not actionable. Croo. 1. 303. Theft. X

If there be ſpæch betwæn two about ſcandalous words, and therein one of them uttereth this ſpæch, I know who ſpake thoſe words, Winniffe and Bell, I mean to have their Ears cut

cut off, and their Tongues cut out; it ſeems no Action will lye for theſe by any one of either of thoſe names. Bendlers Rep. 134. yet ſee Goldſ. 76. which ſeems to differ ſomewhat herein.

Murther. To ſay, A. had a Child, and between her and her mother they murthered it; it ſeems this is certain enough, and happily both of them may have the Action. But A. may doubtleſs have an Action. Bendloes Rep. 152.

Theft. A. and B. were ſpeaking together of C. and D. the Plaintiff, and the Defendant ſpake theſe words of C. and D. C. hath ſtoln ſuch goods, and ſhee (Innuendo the Plaintiff) was privy and conſenting thereunto; in this Caſe it was reſolved to be certain enough, and that the word (Shee) ſhall have reference to D. the Plaintiff, and not to C. and ſo that ſhe may have an Action upon them. Croo. 1. 171.

Perjury. To ſay theſe words, I. S. and I. D. is Perjured, is incertain and not Actionable, but to ſay, Hee Innuendo, the Plaintiff, and one A. are Perjured Knaves, is certain and actionable. Croo. 2. 102.

Innuendo, or Averment. An Action was laid, That the Defendant, Dixit de prefato Carolo, Where is this Baker, Innuendo the ſaid Carolus Baker, hee hath, &c. In this Caſe the words were held to be certain enough and actionable; as to ſay of a Counſellor, Where is this Counſellor, Innuendo ſuch a one, this is actionable. Bulſtr. 3. 72.

But here it muſt be obſerved:

1. That where the words are utterly incertain in, and of themſelves, there no Innuendo

endo or Averment can make them certain, and ſo actionable; but where the words are ſo certain in themſelves as that it may appear what perſon the ſpeaker did intend, there the words may be actionable. Croo. 2. 107.

2. That ſometimes where there is ſuch an incertainty in the words, by a Verdict found for the Plaintiff after not guilty pleaded, the words may be aſcertained to be ſpoken of the Plaintiff, and ſo the Action maintainable. Croo. 2. 107. Bridgemans Rep. 60. Stiles Rep. 245.

3. That where the words are in themſelves ſomewhat incertain, there in many caſes they may by the precedent Conference, or by ſome Circumſtances, and with a ſpecial Averment thereof in the Declaration be made Actionable, and ſo it may be done in many of the Caſes before laid down, wherein the words will not bear Action, without ſome ſuch ſpecial Averment to help. Croo. 1. 303. Bulſtr. 2. part. 227.

The Plaintiff doth in his Declaration ſet forth, that there being talk between his Father and the Defendant, who ſaid to the Father, That Taylor did ſteal the Mare of I. S. and thy Son was conſenting to it; in this caſe the Declaration was ruled to be naught, becauſe it did not averr that the Father had no more Sons but the Plaintiff. Trin. 14. Jac. B. R. Lewkner and Bodnams Caſe. Bulſtr. 3. 249. And yet ſee Croo. 2. 107. Theft.

In all theſe and ſuch like Caſes of Incertainty before named, where the Plaintiff is to make

make a supply by his Averment, to maintain his own Action, and he omit it, it will be the wisdom of the Defendant in his Pleading, to set forth the Truth omitted for his own advantage; As where the words are about a Son, a Brother, or Servant, and the Plaintiff doth omit to shew, that there is but one Brother or Servant in the Case, to shew that there are more Sons, Brothers, or Servants in the Case then one.

3. As to the manner of utterance of the words, and charge of the Slander, Murder Sect. 3.

And now as to the manner of the utterance of the words, and charge of the Slander it is to be known (as is before touched) That slander may be uttered by direct, express, and downright words, thus; Thou hast killed I. S. or, He hath killed I. S. or, A. B. is a Thief, or the like; or by indirect and implicite words, and in other forms of words, either by way of question, thus, Are you not a Thief? Did you not kill I. S. or the like: or by way of report from others, as, A. told mee you were a Thief, or the like; or by way of opinion, or thought, as, I think in my conscience you are a Thief, or the like; or by way of threatning, as, I shall call you in question for killing of my Aunt, or the like; or by way of comparison, as, You are as very a Thief as any in Warwick Goal, or the like. And some are otherwise uttered, also some slanders import a charge of an inclination, or a purpose only to do a thing; and some import a charge of an Attempt, and an indeavour to do a thing, but no Act done; but some import a charge of an Act done, and some have another

another import in them. And therefore it is held it will lye for words of ſlander uttered thus, What art thou a Bankrupt? &c. Croo. 1. part laſt publiſht, 273. What I. S. that Thief? Croo. 2. 422. Paſche. 15. Jac. B. R. Nelſons Caſe, Hardwicks Caſe, 40. Eliz. Co. B. or thus, When will you leave your ſtealing? or thus, Have you brought again the Horſe you ſtole from mee? or, Have you brought again the Mony you ſtole from mee? Maxies Caſe, Trin. 18. Jac. B. R. or thus; Have you been at London to change the Mony you ſtole from me? It is ſaid therefore that it will lye for words ſpoken thus, Did you not kill I. S? and ſome think theſe words actionable, You might have known your own Sheep, and not have ſtoln mine. Yelverton. 144. And theſe words alſo, Hath A. B. the Baſtard ſued you, is that all the ſpight the Baſtard can do you? Croo. 2. 422. Jenk. Cent. 8. Caſe 78. But if words be thus ſpoken, A. ſaith to B. He is a Felon, to which a ſtander by ſaith, Take heed what you ſay; to which he ſaith, Is not he a Thief that doth conceal Felons [or ſteal Trees, or takes my goods in Execution] it ſeems theſe words are not actionable; but if the laſt words were firſt contra, Hill. 17. Jac. Newlands Caſe. And it is ſaid, that an Action will lye for words ſpoken ironically, thus, You are no Thief.

Theft. By way of Interrogation. Theft. Theft. Baſtardy. Felony. Ironically ſpoken. Theft.

This Action will alſo lye for words uttered after this manner, viz. I have ſaid that I.S. is a thief, & I wil juſtifie it, & I have told him ſo much to his face. Croo. 2. 438. Or thus, I will juſtifie that

I have ſaid that I. S. is, &c. I will juſtifie, &c. Theft. Uttered as a Dream. By way of thought or opinion. Theft. Treaſon.

that I. S. is a thief, Trin. 9. Jac. B. R. Barnes Caſe. **So thus,** I did dream that I. S. did ſteal a Horſe, March. Rep. pl. 90. **So thus,** I think in my conſcience I. S. is a Thief, Hobb. Rep. 152. **So thus,** I think thou wouldſt if thou couldſt kill the King, &c. Croo. 2. 407. Hobb. Rep. 152. **So thus,** I think in my conſcience if thou mightſt have thy will thou wouldſt kill the King, &c. Croo. 2. 407. Coo. 4. 19. **See for this** March of Slanders, the firſt part 113. Winches Rep. 124.

But theſe words are held not to be Actionable.

I ſhall queſtion him for, &c.

It is reported A. did ſuch a thing, and I fear it to be too true. **And if queſtion be about a Robbery, and one ſay,** He thinketh the Robbery was done by A. and he fears it is too true. Yelvertons Rep. 114. **So if one ask why** Mary S. **did not come to Church, and another ſaid,** It is thought ſhee is with child, and I fear it is too true. Yelvertons Rep. 114. **So,**

Murther.

This Action will lye for words uttered after this manner, I ſhall call him in queſtion for poyſoning my Aunt, &c. Noys Rep. 63. Sidenhams Caſe 16. Jac. **See** Winches Rep. 124. Popham Rep. 210.

It will bee proved, &c.

So for words thus ſpoken, It will be proved by many vehement preſumptions, that A. did ſteal the Horſe of B. Paſche 7. Jac. B. R. Welbyes Caſe. Whitacres Caſe. Paſche 5. Jac.

Theft. I doubt not to prove, &c. Murther.

So for this, I can prove you are a Theef, and ten men will juſtifie it, Paſche 15. Jac. B. R. **So for this,** I make no queſtion but to prove that hee hath poyſoned my Aunt, &c. Noyes Rep.

Noys Rep. 63. So for words uttered thus, I doubt not but to prove that hee hath ſpoken words of High Treaſon. Serjeant Hitchmans Caſe. Huttons Rep. 75. Winches Rep. 124. Or thus, I will prove Fermon to be a perjured Knave. Croo. 1. laſt publiſht. 122. Or thus, I will prove you are a Theef. Yelverton 126. Or thus, I did not know A. was your Brother, I will prove him perjured, or elſe I will bear his charges. Popham 210. For this, I doubt not to prove you are a Theef. Croo. 1. laſt publiſht. 420. Or thus, I will bring you before a Juſtice, and prove that you have ſtoln, &c. And yet it is ſaid, that it will not lye for this, I will prove that A. was perjured. Winch. 124. And that it will lye for this, I could prove him perjured if I would. Yet ſee Hobb. pl. 394.

Treaſon. Perjury. Perjury.

This Action will lye alſo for words uttered by way of Report from others, thus (viz.) J.S. told mee that A. was a Theef. And in truth J. S. did never tell him ſo. But if in truth J. S. did tell him ſo, then the words are not actionable. Croo. 2. 407, 427. 413. Bulſtr. 3. 225. Croo. 2. 103. The Lady Morriſons Caſe 5. Jac. B. R. Lord Norths Caſe. 41. Eliz. B. R. But if in truth a ſlander be raiſed of a man, and one that is his friend tell him of it, and wiſh him to clear himſelf of it; this is not actionable. And yet if in this caſe a man ſhall report ſuch a thing generally, and not name the Author of the Report, the words will be actionable; and therefore it is ſaid, it will lye for words thus uttered; I have heard A. B. is a Traitor, if hee did not ſay by whom hee

By way of Report. Theft. Treaſon.

hée heard it. So for words thus ſpoken. Did you not hear that A. B. was guilty of Treaſon. Coo. 12. 134. Jenk. Centurie 8. Caſe. 7. Leonards Rep. 187.

I arreſt you for Felony, &c. I charge him with Felony. Sect. 6.

This Action will lye alſo for words uttered after this manner, viz. I charge him with that Felony. Pophams Rep. 110. 111. 150. Croo. 2. 312. Or thus, Bear witneſs I arreſt you for Felony. 17. Jac. B. R. Serles Caſe. Coo. 4. 15. yet ſee the contrary, in Hobb. Rep. pl. 396. Popham Rep. 110. 111. Hobb. Rep. pl. 286. 381. Or thus, I charge you with Felony, and I charge the Conſtable to take you; or, I arreſt thee for high Treaſon; ſome ſay this is actionable. Mich. 5. Jac. B. R. the contrary ſeems to be in Huttons Rep. 38. And there held to lye for this. I accuſe J. S. of High Treaſon. Huttons Rep. 131. It is held to lye for this, Bring mee to the Conſtables houſe, for I am robbed, and I will bring him to the houſe of J. S. to arreſt him, for hee ſetteth them to rob mee from time to time. So to ſay to a Conſtable, There hee is, take him, for I charge him with that Felony. Stiles 59. And yet for this it will not lye, I charge you, King, with Felony, and you Conſtable [Innuendo, A. &c.] to apprehend him. Popham. Rep. 210. Yet ſee Hobb. pl. 286. 381. Or thus, If I could find J. S. I doubt not but within two dayes to arreſt him of ſuſpition of Felony. Coo. 4. 15. Albeit hée do not ſay, Hee committed Felony. Popham 150. And yet ſome ſay, that it will not lye for theſe words, I charge him with Felony, &c. Nor for this, I have arreſted A. for Felony,

Treaſon.

Theft.

Felony.

for

for ſtealing ſheep of mine. Pophams Rep. 210. **Nor for theſe words**, I charge you with Felony, for taking mony out of the pocket of J. S. Huttons Rep. 38. Hobb. Rep. pl. 381. 394. **And yet if no Felony be done, it ſeems reaſonable the words ſhould be actionable.** Brownl. 1. part 18. Hob. Rep. 38. **But in caſe where a Felony is done; And a man in a courſe of Juſtice ſhall ſpeak words to this purpoſe,** I arreſt thee for Felony; or, I will charge him with [or arreſt him for] Felony, **there the words will not be actionable.** Popham Rep. 110. 111. Theft.

The Action will lye for words uttered after this manner, Thou haſt been in the Goal for ſtealing a Pan. Croo. 2. 155. Bulſtr. 1. part 40. **And yet it is ſaid, it will not lye for this,** Thou waſt in Warwick Goal for ſtealing of Horſes. Noys Rep. 24. Bulſtr. 1. part. Huttons Rep. 2. Brownl. and Goldsb. 16. **And yet it is held, it will lye for this,** Thou waſt in the Tower for High Treaſon. M. 9. Jac. B. R. **if it be falſe that is ſaid.** Hobb. Rep. pl. 96. **So it is ſaid, it will lye for this,** She is a very Theef as any that robbeth by the High-way ſide. **So for this,** She is a worſe Thief than any that robbeth by the High-way ſide. Croo. 1. laſt publiſht. 224. Thou haſt been in Gaol for, &c. Indicted, &c. Theft.

But it is ſaid, it will not lye for words thus ſpoken, Thou wert arraigned for Felony, for ſtealing of a Horſe. Bulſtr. 1. part 40. **Nor for this,** He is in Warwick Goal for ſtealing of a Mare. Hobb. Rep. 196. **But if he ſay,** He ſtole them, and was in Gaol for it; **this may be actionable. Nor will it lye, for ſaying** Theft. Or he is in Gaol for, &c.

He is indicted. arraigned, &c. Felony.

of a man, He was indicted [or arraigned] or impeached] for Felony, if it be true; but if falſe, the words are actionable. Hobb. Rep. pl. 190. 196. 286.

But it ſeems it will not lye for words thus ſpoken, viz. What is J. S. in Goal for? for murder. Huttons Rep. 2. Nor for this, J.S. was in Newgate for forging of Writs. Huttons Rep. 2. Nor for this, Thou waſt whipt about Taunton [or burnt in the hand, or ſhoulder] for ſtealing Sheep. Hills Caſe. Mich. 8. Car. 1. B. R. Nor for this, He was detected for Perjury. Coo. 4. 16. Nor for this, Thou art a falſe Knave, thou waſt arraigned for two Bullocks; or, for thou waſt arraigned for ſtealing two Bullocks. Croo. 1. part laſt publiſht. 279. Nor for this, He held up his hand at the Bar for Felony. See Brownl. 2. part 272. And therefore, where the Action is laid for ſuch like words as theſe, He was indicted for Felony at W. Seſſions; or, He was impeached for Felony; or, He was accuſed for Felony; the Plaintiff muſt averr, that there was re vera no ſuch thing done, otherwiſe the Action will not lye. Hobb. Rep. pl. 196. 289.

Thou waſt whipt, &c. Thou waſt burnt in the hand, &c. Thou waſt detected for, &c. Thou waſt convicted for, &c. He held up his hand at the bar for, &c. Averment.

It is ſaid, it will lye for this, I will indict him for ſtealing of my Horſe. Huttons Rep. 58.

It is ſaid, that this Action will lye for this, I will pawn my ſhirt, I will hang him for, &c. Winches. Rep. 124. And yet it is ſaid not to lye for this, It is in my power to hang thee. Paſche 7. Jac. B. R. Brownl. 2. part. 280.

I will hang thee, &c.

So it is held to lye for theſe words, As ſure as you believe God rules the World, and the King

King rules the Kingdom, ſo ſure did Whorewood ſteal my horſe. Winch. Rep. 124. Hughes Abridgement. 37. **So alſo for this,** I am ſure J. S. is a Thief. Sure it is that J.S. is a Theef.

It is ſaid, it will not lye for this, I have ſerved thee with the Queens Letter for ſtealing of goods out of my Mothers houſe. Croo. 1. part laſt publiſht. 234.

So likewiſe for this, Maſters bear witneſs he is a Theef. Huttons Rep. 39. But Quere of this. Theft.

It is generally held, That the words that ſhall bear an Action, muſt be uttered in a language, that one of them (at the leaſt) that do hear them do underſtand. And therefore that to call a man Theef **in** Welch, **or in** Latine, **before ſuch perſons, neither of which do underſtand the tongue; that this will not bear an Action. And yet ſome doubt much of this, for they may remember the word, and enquire, and ſo come to know what it is.** Hobb. Rep. pl. 63. 276. 126. Hughes Abridgement, 37. Croo. Rep. 1. part laſt publiſht. 496. 497. 865. **It is ſaid, that this Action will not lye for words thus ſpoken;** Take heed that you do not ſpeak Treaſon. Bulſtr. 1. 143. Words ſpoken in an unknown language. Sect. 7. Theef. By way of Caution. Treaſon.

It is ſaid, it will not lie for this, He hath deſerved to ſtand on the Pillory. Bulſtr. 1. part 147. **And yet it is ſaid, it will not lye for this,** Thou deſerveſt to be hanged. Mich. 4. Jac. B. R. **Nor for this,** Thou haſt deſerved hanging. Croo. 1. laſt publiſht. 470. **Nor for this,** He will come home if he eſcape the Gallows, for he hath deſerved to be hanged. **Nor for this,** If thou hadſt thy Right, He hath deſerved, &c.

thou hadſt been hanged. Brownl. 1. part. 3.

I fear you will be arreſted, &c

Felony.

It is held, that the Action will not lye for theſe words thus ſpoken, I fear you will be charged with [or arreſted for] Felony. **Nor for words thus ſpoken**, Take heed you be not arreſted for Felony. Hobb. Rep. pl. 381. 286.

I doubt you will be found guilty, &c. Treaſon.

Nor for words thus ſpoken, I doubt [or I fear] whether your words be not Treaſon, and I ſhall adviſe upon them. Bulſtr. 1. part 143. 148.

Treaſon.

It is held to lye for words thus ſpoken, I did tell Mr. Carne, that I am neither Traitor to my Prince, nor Rebel to my Countrey, as J. S. **and the words are ſpoken to Mr.** Coxell, **albeit they were never ſpoken to Mr.** Carne, **nor to any but to** Coxell **himſelf. And ſo for this, If I ſay to A.** Go tell B. he is a Thief, **albeit** A. **do never tell** B. **of it.** Mich. 9. Jac. Foxes Caſe. B. R.

Thou art as very a Thief as any in the Gaol. Averrment. Theft.

It is held that this Action will lye for words thus uttered, Thou art as very a Thief as any in Warwick Gaol [or as any in England.] **So as he averr, that there is a** Thief in Warwick Gaol, or in England, **and what Thief it is. But not otherwiſe. Nor will it lye for theſe words**, If ever man was perjured, Williams was, **becauſe it appeareth not that any man was** perjured. Bulſtr. 1. part 40. Noys Rep. 116. Sed Quere of this laſt Caſe. Winches Rep. 70. 89.

Perjury.

I ſuſpect you, &c. Sect 8. Theft.

It is ſaid, this Action will not lye for words thus uttered, I ſuſpect you for ſtealing of my Horſe.

Horſe. Huttons Rep. 18. 19. Nor for this, I doubt not to ſee J. S. indicted at the next Aſſizes for Barretry or Sheep-ſtealing, as George Bland, for he was indicted at the laſt Aſſizes for ſtealing of Sheep. Albeit it was not ſaid by the Plaintiff, that hee was not indicted. Huttons Rep. 18. 19. Barretry.

But here wee muſt add to the Caſes before put upon this head, theſe following Cautions to be obſerved.

1 That in many of the Caſes before mentioned under this head, the words there mentioned that are ſaid not to be actionable in another Caſe; yet if they be ſpoken to a Juſtice of Peace, or ſome ſuch like Officer, with reference to his Office, they may be actionable. Huttons Rep. 131.

2 That no Innuendo will alter the Caſe, or make the words not actionable in themſelves, to be actionable, by the Innuendo.

3 That in ſome of the Caſes before cited (as to the frame of words) not to be actionable, that there perhaps by the help of a ſpecial Averment, added by the Plaintiff in his Declaration, the ſame words may be made actionable, and therein eſpecially, wherein the Plaintiff ſhall afterwards have a Verdict given for him alſo in the Caſe.

4 That in ſome of the Caſes noted not to be actionable for the frame of the words, the precedent or ſubſequent words ſpoken at the ſame time with them, may make them actionable, for as the precedent and ſubſequent words may make actionable words ſpoken at the

same time not actionable, so may they make words not actionable to be actionable.

5 That in many Cases where the words originally spoken for their incertainty may not be Actionable, yet after by the help of a Verdict for the Plaintiff in the Case, the Action may become maintainable.

6 That the Plaintiff must be very careful how he Declare in his Action upon any such words spoken, and the Defendant likewise how he pleads, for either of them may much disadvantage themselves thereby.

7 That many of these Cases seem very difficult, and questionable, and therefore it will be the wisdom of him that is to Sue in such a Case, to be well advised by the Lawyers therein.

× And now we shall come to the Matter and Quality of the Slander it self, and herein we are to know, what we have before touched upon, That there are some Slanders that bring a man in danger of his life, and there are other Slanders that do not bring a man in danger of his life, but they do bring him in danger of some bodily harm; and there are other Slanders that do neither bring him in danger of his life, nor of other bodily harm; but they bring him in danger of some other damage and prejudice in his Name, or Estate, or in both. Those that bring a man in danger of his life, do carry in them some charge, either about matter of Treason, or about some other Felony; but herein we are to know, that there are some general words that may

may refer to both, or either of theſe, and may be Actionable words, and therefore it is held, That this Action will lye for saying of a man, He is a Traitor, a Murtherer, a Theef, a Robber, a Church-robber, a Sacrileger, a Houſe-robber, a Buggerer, a Sodomite, or the like, 30 Aſſ. 19 Dyer 19. 236. 27 H. 8. 14. 22. So for saying of a man, He hath committed High Treaſon, or Treaſon, or Murder, or Robbery, or Burglary, or Buggery, or Sacriledge, or the like. Dyer 19. 75. 236. Plow. 118. Jenk. Cent. 7. Caſe 70. Croo. 116. 27 Henr. 8. 14. Coo. 10. 130. and 4. 15, 16. 30 Aſſ. 19. Croo. 2. 275. 424. Bulſtr. 2. 272.

Traitor. Murtherer. Theef. Robber. Sacrileger. Houſe-robber. Church-robber. Buggerer. Sodomite.

It ſeems to be agreed alſo, that this Action will lye, for saying of a man that He is a Felon, or that he hath committed Felony, Coo. 4. 17. Bulſtr. 1. 148. Croo. 2. 312. And yet the contrary is affirmed by ſome, by whom it is held, that it will not lye for saying of a man, He is a Felon, or, he hath committed a Felony, unleſs he ſhew ſomething wherein he is ſo, or hath ſo done, as that he ſtole a Horſe, or the like, for that it is too general and incertain, for every maihme is a kind of Felony. But ſee for this, Huttons Rep. 38. Bendl. Rep. 202. Coo. 4. 15.

Felon.

But this is agreed on all ſides, that theſe general words may be ſo intermixt with other words of explication, and qualification, that they may not be Actionable at all; as to ſay, You are a Traitor, for I truſted you to

buy Land for me, and you bought it for your ſelf. Or, You are a Thief, for you robbed me of one of my Sentences out of one of my Books, or, of my Apples out of my Orchard; or, You are a Murtherer, for you killed forty Hares in one year, or the like. Huttons Rep. 69. 110. 113. Yelvertons Rep. 10. 155. Coo. 4. 13, 14, 16. But for the further opening of this, ſee what followeth in the next Section.

4 As to the matter of the Slander it ſelf. Sect. 9.

And as to the matter of the Slander it ſelf, and the thing charged upon the ſlandered perſon, take theſe following Caſes, referring to all kind of Slanders. This Action will lye for this, Thou haſt Sacrificed thy Child to the Devil. So for this, He is infected of the Robbery lately committed, and ſmells of it; for the former, but not for the latter words. Dyer 317. Huttons Rep. 58.

Murder.

Robbery.

This Action will lye for this. Waterman and thou [Innuendo, the Plaintiff] haſt killed thy Maſters Cook [Innuendo, &c.] And I will bring thee in queſtion for thy life. And that without any Averment, who was his Maſter, or that he had a Cook, for it is certain enough without it. Poph. Rep. 128. Bridgm. 60. Stiles Rep. 66. So for this, Thou art a Thief, and haſt robbed my Son; without Averment that he had, or hath a Son. Noys Rep. 55. So for this, Thou did ſtkill a Woman great with Child [Innuend. uxorem cujuſdam, R. C. defunct. M. 2. Jac. B. R.

Murder.

Theft.

Murther.

This Action will lye for this, Long is a Murtherer, and hath bewitched my child, and was the death of my child, when a Verdict

is

is found upon a Not guilty for the Plaintiff. So for this, Whosoever is the falsest Thief, and the strongest in the County of S. whatsoever he hath stoln or done, A. B. is falser than he; so it be applied by an Averment, that such a Felon is in the County of S. but not otherwise. So for this, Thou art a Thief, and hast stoln one Passions Lamb, and marked and denied it, albeit there be no Christian name to Passions; for the first words are Actionable. Huttons Rep. 109. It is said it will lye for this, Thou art a concealer of Felonies. Bulstr. 1. 148. Felony by Theft. Averment. Felony.

It is said to lye for saying of an Attorney, He was cooped for forging of Writs. 31 Eliz. in Nowels Case. Huttons Rep. 58. Forgery.

It will not lye for this, He hath cousened the Town of S. [or, hath made a false account.] But if he be an Officer of whom the words be spoken, it is more doubtful. Bulstr. 1. part. 228, 229. Cousening.

It seems it will not lye for these words, He is a base beggarly Rascal and hath cousened the Parliament a hundred times, and deserves to ride on the Wooden Horse on Sandhill. Stiles Rep. 422. Nor for these words, Old Apthorp is a perjured Knave, for he did swear that such wood was worth forty shillings, whereas it was dear of a mark. Bulstr. 3. 150. Perjury.

This Action will not lye for saying, Thou art a false Thief, Rogue, or some such like thing. Brooks Action of the Case, 112. and therefore Theft. In the Disjunctive Declaration.

therefore where the Declaration, That the Defendant ſpake ſuch words in certain, Vel verba ſimilia; this is naught. Nor will it lye for this, Thou haſt ſtoln my Mare, or conſentedſt to the ſtealing of her. Croo. 1. laſt publiſht. 780.

But where it is ſaid in the Declaration, that the Defendant ſpake of a Merchant,

Couſening. Bankrupt. Thou art a couſening Knave, and a Bankrupt Knave, ac eadem verba, aut alia iis ſimilia ſepius repetivit, in this caſe it is good; for the firſt words are certain and Actionable, 41 Eliz. Co. B. March in Slanders, 2 part 8. Golsb. Pl. 11. Hill. 41 Eliz. Co. B.

Nor will the Action lye for theſe words,

Theft. Thou haſt ſtoln my Mare, or was conſenting to it. Noys Rep. 172.

Murder. This Action will not lye for ſaying, He hath killed J. S. where there was never any ſuch man known as J. S. Godb. 181. Pophams Rep. 188. Nor for ſaying to a Bayliff,

Deceit. Thou doſt ſerve falſe Warrants, and deceiveſt the people. See it in Croo. 1. laſt publiſht.

Innuendo. 192. Nor for this, You make falſe Records, and juſtifie them for true. Nor for this, Thou art a Papiſt, and not the Queens friend. Nor for this, Thou haſt broken my ſhop, and taken

Theft. my goods, and an Innuendo will not make them Actionable. Croo. Idem.

This Action will not lye for ſaying, He hath cut my Wives Purſe, and his Father knew it, and his Father knowing of it received it of

Felony. him, and the Money and Rings therein. But if he add this further, and therefore I charge him with

with that Felony, it may be actionable. And yet it is ſaid it will not lye for this, A. did ſee B. that had committed Felony, and did ſuffer him to eſcape, I charge him of Felony, Poph. Rep. 111.

Nor will it lye for this, Thou art a Thief, and that will be proved by the Apples thou hadſt off my trees. Yelvertons Rep. 10. 34. Theft.

It is doubted whether it will lye for this, Thou art a Knave of Record, and a forgering Knave. For forgering is altogether incertain, Hill. 1. Car. B. R. Forgery.

This Action will lye, for ſaying of a man, He hath been a Thief. So for ſaying, He hath committed Perjury. But for ſaying, J. S. was a Thief; Or, J. S. had been a Thief: Or, of a Juſtice of Peace, He had been a debauched man, &c. Or of any man, He hath had the Pox, or the Plague; it ſeems none of theſe words are actionable, for it may be otherwiſe with him now. Noys Rep. 151. Stiles Rep. 22. 23. 210. 24. 25. Eliz. Co. B. Words in the prererperfect tenſe. Theft. Sect. 10. Plague.

It will lye againſt a woman Covert, for ſaying, Thou art a Thief for ſtealing my Corn out of my Barn, albeit it cannot properly be ſaid to be her Corn. Stiles Rep. 135. Theft.

This Action will not lye, for ſaying, He did break open the Trunk of A. with the tools of J. S. and took out twenty pound, for this may be a taking as a Treſpaſſor. So it is ſaid of theſe words, He is an arrant Thief, for he did break open the Trunk of A. with the tools of J. S. and took out twenty pound, and that theſe latter words do mittigate the former, Winch. Rep. 70. Theft.

This

Forgery. **This Action will not lye for ſuch words as theſe**, Thou deſerveſt to be hanged; **or**, thou waſt cubbed up for forging of Writs. Croo. 1. part laſt publiſht. **Or**, it is in my power to hang thee; **Or**, thou ſeekeſt my life. Coo. 4. 15. **Or**, thou didſt bear away
Theft. my goods; **Or**, thou didſt carry away my goods. Hob. Rep. 236. **Or**, he took my mony with a ſtrong hand. Mich. 15. Car. 1. B. R.
Forgery. **Or**, he forged a Writing [or a Warrant.] Huttons Rep. 39. Hobb. Rep. 4. 48. **Or**, he
Murther. hath killed a man, **not naming any man.** Popham. Rep. 188. **Or**, thou didſt cut my
Cut-purſe. Purſe. Popham. Rep. 110. **Or**, thou art a Cut-purſe. **For every Glover is ſo.** Godb. 181. **Nor for this**, Thou waſt the cauſe that J. S. did hang himſelf [or did cut his own
Murder. throat,] Hetleys Rep. 70. **For theſe words are all of them too general, and incertain.** Hobb. Rep. pl. 236. **So it is ſaid for theſe words**, Thou haſt bewitched a man; **Or**,
Witchcraft. thou haſt bewitched my good man. **And yet it is ſaid to lye for this**, Thou haſt bewitched a man; **Or**, thou haſt killed a man by witchcraft. Stiles Rep. 106. **It is ſaid, it will**
114 Filching fellow. **not lye for theſe words**, He is a filching fellow, and did filch four pound from me. Hutton. 34. **Or**, thou art a filching fellow, and didſt filch from A. B. one hundred pound. Hobb. pl. 323.

Prigging fellow. **Nor for this**, He is a prigging pilfring Merchant, and hath pilfred away my Corn and my Goods from my Wife and my Servants, and this I will ſtand to. Owens Rep. 57.

Nor

Nor for this, Thou haſt ſtoln a peece, and I will charge thee with Felony, **for it may be a peece of any thing.** Popham. 187. Theft.

Nor for this, Thou didſt carry away my Sheep on thy back. Huttons Rep. 8. **Some Judges have held, That for ſaying,** Thou haſt killed J. S. **no Action will lye, for the words are too general, and he may come to his death by Execution, Phyſick, Battel, &c. But the general opinion of the Judges is, that the words are actionable.** See Croo. 2. 306. Godb. Rep. pl. 257. Hetleys Rep. 70. Coo. 4. 16. Snaggs caſe. Popham. 187. Croo. 2. 438. Bulſtr. 1. 42. Croo. 1. 352. Murder.

And yet to ſay to one, Thou art a Healer of Felonies, Mainſworne, Out-putter, Sheep-Thief, **or the like in the Country where the uſe and meaning of the words are known to be ſcandalous, will bear Action. And ſo for Slanders in the** Welch, **or in other Languages, the Action will lye for them, and that without Averment of the ſenſe of the words in the Country.** Hobb. Rep. pl. 155. 236. Goldsb. and Brownl. 4. 6. Croo. 1. part laſt publiſht. 250. Strange words. Another Language. Averment.

This Action will not lye for theſe words, I have matter enough againſt thee, for J. H. hath found Forgery againſt thee, and can prove it. Huttons Rep. 39. **Nor for this,** Thou art a perjured Knave, and that will be proved by a ſtake that ſtandeth between the ground of J. S. and J. D. Yelvertons Rep. 10. 34. Lewis Caſe. Paſche 1. Jac. B. R. **Nor for this, ſaid of a man ſworn in a Cauſe before a Judge,** He was diſproved Forgery. Perjury.

disproved before the Justices of Assize at Darby before Kingsly. Owens Rep. 58.

For these words are some of them incertain, and some of them insensible.

Murder. Nor for these words, That Prichard which serveth Mris. Shelley did murder John Adams child. And in the Count it is thus, Quandam Isabellam Adams modo defunct. filiam cujusdam Johannis Adams of W. in the County of G. Innuend.] for it should have been true, and not modo defunct. Coo. 13. 71.

Theft. The Plaintiff declares, that the Defendant dixit de præfat. The Plaintiff, Thou [Innuendo the Plaintiff] hast stoln goods, &c. and this after not guilty, and a Verdict for the Plaintiff was held good enough. Pasch. 5. Jac. Stones Case.

And so where two talk of one Tooses wife, he being lately dead, and the one saith to the other, Tooses wife [Innuendo the Plaintiff killed thy Husband [Innuendo. one J. D. her Husband lately dead; this is actionable, Croo. 1. 352. Croo. 2. 366.

Murder.

But here we must also add to the Cases put upon this head, the same Cautions we gave upon the last head.

1 That in many of these Cases where the words spoken to ordinary men are not actionable, yet spoken to a Justice of Peace, or such like officer, they may be actionable.

2 That an Innuendo will not make any unactionable words actionable.

3 That an Averment, and especially if there be a verdict found upon it, for the Plaintiff,

tiff, may in some Cases make words otherwise unactionable, to be actionable.

4 That precedent or subsequent words may make words in themselves doubtful, and incertain, and unactionable, certain and clear, and so actionable.

5 That in all Cases of uncertain and doubtful words, the Plaintiff must be very careful how he doth declare, and the Defendant must be careful how he doth plead.

6 That there being some difficulty in many of these Cases it will be his wisdom, that is, to bring his Actions in the same Case for the same words, that he be well advised in it.

It is said in Croo. 1. 201. That this Action was brought against a man for that he had maliciously and falsly imposed a Crime of Felony upon the Plaintiff, and caused him to be arrested for it, and that it was adjudged good. Croo. 1. 201.

We shall now descend to the particulars before named. And 1 To slanderous words about matter of Treason.

CHAP.

CHAP. VI.

Of words of Slander about matter of Treason.

Treason, what it is.

FOr the opening of this particular about ſlanderous words, that have an import in them of any matter of Treaſon, or of any thing about it, We are to know firſt of all, That Treaſon (in the eye of our Law) is a great Crime, and the puniſhment appointed by the Law to be inflicted on him that doth commit this offence, is the loſs of his life, and all his eſtate whatſoever. If any man therefore ſhall by ſlanderous words charge another man with this Crime, or any thing like unto it, the party ſlandered may have this Action to relieve himſelf by damages to be recovered therein for this wrong.

Traitor.

And therefore it is held, that this Action will lye, for calling of another Tratior, or Traitor-Knave. 30. Aſſ. 19. 27. H. 8. 9. 14. 27. 26. H. 8, 9. Coo. 4. 17. Or for ſaying of another, He hath committed Treaſon---or the like. So for ſaying, There is no King in England. Croo. 2. 407. So for this, I doubt not but to prove that he hath ſpoken Treaſon. Serjeant Hitchams Caſe. Huttons Rep. 75. So for this, Thou haſt ſpoken Treaſon, and I ſhall hang thee for it. 9. Jac. Beriffords Caſe. B. R. Bulſtr. 1. part 148. So for this, Thou haſt ſpoken Treaſon, and I will prove it. Croo. 2. 235. But it will not lye for this, Take heed you do not ſpeak Treaſon. Nor for this, I fear you have ſpoken Treaſon, and ſhall adviſe

Committed Treaſon.

Spoken Treaſon.

adviſe upon it. **Nor for this,** I doubt you have ſpoken Treaſon, and I ſhall adviſe upon it. Bulſtr. 1. part 148. Trin. 9. Jac. Benefords Caſe. **This Action will lye for ſaying,** Thou haſt killed the King. Popham. Rep. 187. Killed the King.

So it will lye for ſaying, Thou haſt committed Treaſon beyond the Seas, and didſt run away from thy Captain. Lewis Caſe. Croo. 2. 424.

So it will lye for this, Go tell Mr. Carns that I am neither Traitor to my Prince, nor Rebel to my Country, as J. S. is, **it will lye for** J. S. **in this Caſe.** Mich. 9. Jac. Rebels.

So it is ſaid, it will lye for ſaying of a Juſtice of Peace, Deputy Lieutenant, a Servant of the Kings Perſon, or any ſuch eminent perſon, that he is no true Subject. **But otherwiſe it is if they be ſpoken of an ordinary perſon.** See for this, Croo. 1. laſt publiſht. 621. Croo. 2. 202. Walgraves Caſe. Bulſtr. 3. 221. Yelvertons Rep. 104. Mich. 32. 33. Eliz. Co. B. Smiths Caſe. Goldsb. Rep. 441. **But this,** I am put out of the Parſonage houſe by Fowler, the Patron, who is neither the Queens friend, nor a true Subject, **was held not actionable.** Croo. 1. laſt publiſht. 268. No true Subject.

So it is ſaid to lye for this, Thou art an enemy to the State of this Realm. Croo. 1. laſt publiſht. 602. Hill. 40. Eliz. Co. B. Chambers Caſe. 38. Eliz. B. R. **So for this,** I was never a Traitor to the State, as you have been. Lamplews Caſe. See Stiles Rep. 435. **But it will not lye for ſaying of a man,** He is a Rebel. 44. Eliz. Fountain and Grimes Caſe. Croo. 1. laſt publiſht. 621. Rebel. Rebel.

So it ſeems it will lye for ſaying to one, Thou art a Rebel, and all that keep thee company are Rebels, and thou art not the Queens friend, for all this together. And yet it ſeems it will not lye for either part of theſe words alone. Croo. 1. part laſt publiſht. 638. 876.

Maintain Rebels.

So it is ſaid to lye for this, Thou doſt harbour and maintain Rebels and Traitors. And this albeit hee do not ſay, Knowing them to be ſuch. Goldsb. Rep. pl. 7. 48. See chap. 10. Sect. 10.

Partake with Rebels.

So it is held, it will lye for this, Thou waſt partaker with the Rebels in the North in their Rebellion. But not for ſaying, Thou waſt partaker with the Rebels in the North, without more words; for this is altogether incertain. Bulſtrode 2. part 109.

Incertainty.

So for this, My Lord Preſident in the North ſhewed Mr. Stapleton his hand ſet to a Book, whereby hee had conſented to the late Rebels in the North, but by the means of Mr. Fairfax, my Lord Preſident was perſwaded, and the matter was ſuppreſſed. But if the words had been thus, Hee conſented to A. and B. (who were Rebels) and no more; perhaps they might not be actionable. As where it was ſaid of one, Hee was confederate with Campian the Jeſuite; theſe words (it is ſaid) are not actionable, for hee might not know him to be a Jeſuite. Croo. 1. laſt publiſht. 251. 26. Eliz. inter Brown. & Liſle.

By Report. Sect. 2.

So it will lye for this, That John Peirſe did ſay, that John Lewis [the Plaintiff] did ſay, That there is no Prince in England; with this

this Averment, that John Pierſe never ſpake any ſuch words. Lewis Caſe. Croo. 2. 407. 413. 427. Bulſtr. 3. 225. But to ſay, I have + heard that A.B. is a Traitor. If he ſay by whom he heard it, and re vera hee did hear it; it is not actionable, Croo. 2. 407.

So it will lye for a Maſter, for theſe words ſpoken to his Servant, Thou haſt a Traitor to thy Maſter. Innuendo the Plaintiff. Croo. 1. part laſt publiſht. 906. So for this, It is well known that I am a true Subject, but thou ſerveſt no true Subject. [Innuendo. W. W. Croo. 1. laſt publiſht. 191. No true Subject.

So it is held, it will lye for this, I am perſwaded in my conſcience [or I think in my conſcience] thou wouldſt, if thou couldeſt kill the King, and all his Subjects, and thou art a maintainer of Papiſts and Rebellious perſons. Croo. 2. 407. Sydenhams Caſe. See Hobb. Rep. pl. 152. 180. Bulſtr. 3. 260. Opinion only. Kill the King. Maintaineſt Rebels.

It is ſaid in Godb. Rep. 147. to be adjudged not to lye for theſe words, Thou art an arrant Papiſt, and it were no matter if ſuch were hanged, and thou, and ſuch as thou, wouldſt pull the King out of his ſeat. Inclination. ×

But this Action will not lye for ſuch words as theſe, Hee is a ſeditious Knave. Nor as it hath been ſaid, for this, Hee is a Rebellious Knave, or he is a traiterous Knave. Coo. 4. 19. Bulſtr. 2. part 210. And yet it is ſaid, it will lye for ſaying of a man, He is a rebellious and traiterous Knave. See it, Croo. 1. part laſt publiſht. 171. Adjective words.

Nor will this Action lye for this, Thou haſt dealt treacherouſly with mee. But to ſay,

Thou haſt dealt treacherouſly with the King, are dangerous words, and may be actionable. Croo. 2. 80. Yelvertons Rep. 72.

Under qualification by other words.

Nor will it lye for theſe words, Thou art a Traitor, for I truſted thee to buy Land for me, and thou boughteſt it for thy ſelf. Coo. 4. 14, 15, 16. See in March. Rep. 20.

Nor for this, Thou art a Traitor, for thou didſt affirm that the Kings Coin was ſaln a noble in the pound. In Bulſtr. 265. Nor for this, Thou haſt killed thy wife, and art a Traitor for it. Coo. 4. 13. 16.

Sedition.

It is ſaid, that it will not lye for this, He is one that doth like of thoſe that do maintain ſedition againſt the King. See Coo. 4. 13. 19. Croo. 2. 80, 81. And yet if it be of a great man, or the conference be about the great, publick, and violent Sedition, as the word doth moſt properly import, they may be actionable. Coo. 4. 13. Lord Cromwells Caſe.

Incertainty in the perſon.

Nor will it lye for ſaying, One of the ſervants of A. B. (if hæ have more than one ſervant) or one that is near to A. B. is a Traitor. For it is altogether incertain, who it is that is intended by this ſpæch.

Innuendo.

And no Innuendo can aſcertain it, Coo. 4. 17.

About coining of mony. Sect. 3.

This Action will lye for theſe words, Thou art a Coiner of falſe mony, and I have mony to ſhew which thou coinedſt. Croo. 1. part laſt publiſht. 629.

So for theſe words, Thou waſt in Lancaſter Goal for coyning. To the which the party accuſed anſwered, I was there, and anſwered it well enough. And then hæ replied, You were burnt

burnt in the hand for it. Croo. 2. 536.

But it will not lye for saying any such words as these, Thou art a coyner of Money, or, thou coinest gold, or, thou art a coiner of gold; or, thou mayest well be rich, for thou coinest thirty shillings in a day; **for a man may coin by authority, and it may be his trade.** Mich. 9. Jac. Burnels Case. **See the Cases reported in** Godb. Repl. pl. 234, 375, 391.

It is said, this Action will lye for this, Thou hast forged a Privy Seal, Croo. 1. 157. **But not for these words,** Thou hast made the Great Seal. Hobb. Rep. pl. 48. About Forging the Kings Seal.

But upon this Head these things are to be known.

1. **That in some of the Cases, and for some of the words said not to be Actionable, if so it be that the Party of whom they are spoken have any special damage by them, he may perhaps in that Case have this Action for his damage.**

2. **In all the Cases before named, and in other Cases, for words of the like nature, with the words before mentioned that do bear Action, the Plaintiffe need not shew any losse he hath sustained by them, for this Action will lye without this.** Averment.

3. **All the Actions that are brought for words of this nature, are and must be subject to the general Rules before laid down viz. they must be malicious, false, particular, certain, positive, of a single, and clear intendment, under a capa-**

city of Malification, by the precedent and subsequent words spoken with them, and hold forth an Act done, and not an intent only; for albeit the words in themselves be Actionable, yet if they be incertain in the Person of whom they are spoken, or the like, they may not be Actionable.

CHAP. VII.

Of words of Slander about matter of Murder.

Murder, what it is. Sect. 1.

FOr the opening of this particular about Slanderous words, that have an import of any matter of Murder in them, wee are to know, That Murder is a great Crime, and the punishment appointed by the Law for it is great, the losse of the life, and the whole estate. If any man therefore do by slanderous words charge another with this Crime, or any thing like unto it, he may have his remedy against him by this Action.

Murtherer.

And therefore it is held that this Action will lye against a man for saying of another, That he is a Murtherer; Or for saying, that he hath committed Murther. Coo. 10. 130. and 4. 15. Dyer 236. Sir Owen. 33. So for this, Thou art a Murdering Knave. Croo. 1. 132, 133. So for this, Thou art a long shag-haired Murdering Rogue. Greens Case. 9. Car. 1. B.R. So for this, He is a Man-slayer, and hath lain in wait to kill. 28 Eliz. B. R. Harris and Dixons Case. So for this, He is a maintainer of Murtherers. Coo. 4. 14. See Chap. 10. Sect. 10.

So

So it will lye for saying this, Thou hast killed J. S. Or, Thou hast Murdered J. S. or, Thou hast poysoned J. S. or, Thou hast killed thy Husband, or the like. Croo. 2.352. 438.Coo. 4. 16. And yet some have held it otherwise for the first words, Thou hast killed J. S. Croo. 2. 306. in Godb. 257. See after Sect. 3. Poyson,

It is held it will lye for this, I will call him in question for the poysoning of my Aunt, and I make no question but to prove that hee hath poysoned her. In a case cited in Noys Rep. 63. 39 Eliz. Webbs Case. Croo. 1. part last publisht. 169. For the manner of uterance of the words.

So for this, It will be proved by many vehement presumptions, that A. B. was the Plotter of the death of C.D. Pasche. 7. Jac. B. R. in Yelvertons Rep. 153.

It is held it will lye for this, I have said that J.S. hath poysoned her husband, and I will justifie it, and I have told her so much to her face. Croo. 2.438. Poyson.

It is held it will lye for these words said by a Servant, Thou hast killed my Masters Cook [with this in the Declaration, Innuendo, I. H. Servant to Mr. Dingley, who was murthered; And the Count was held good in this Case without any Averment who was his Master; or that Mr. Dingley was Master to him that was slain. Croo. 2. 422. So for this, Sir Thomas Colt hath killed his Cook, without any Averment that his Cook is dead, Pasche. 1. Jac. B.R, Sir Tho Holts Case. So for this, Thou didst kill a Woman great with child, with this Addition in the Declara- Incertainty. Averment, Averment.

tion. Innuendo, uxorem cujuſdam. R. S. defunct. **And this was held to be certain enough.** Mich. 2. Jac. B. R.

Certainty. **It hath been held it will lye for this,** He took my Wife by the hand and ſaid, Thou and I will be married ſhortly; **and after that he diſpatcht his Wife out of the way.** Coo. 4. 16.

So for this ſaid of A. A. [**the Plaintiff Innuendo**] was with child before ſhe was married, and betwixt her Mother and her they murthered it, which child was born alive, and heard cry; **it is ſaid the Action lyes.** Eves Caſe in Bendloes Rep. 152.

So for this, He is infected with the Murther lately committed, and doth ſmell of it. Dyer 317.

So for this, Thou art a baſe Fellow, and didſt kill thy firſt Wife. Bernards Caſe, B. R. in Stiles Rep. 227.

Averment. **So for this,** Thou art a Murtherer, for thou art the Fellow that didſt kill Mr. Sydnhams Man. **But then the Plaintiff muſt be ſure in his Declaration, one way or other to ſhew, that one of his Servants was ſlain.** Croo. 1. laſt publiſht. 331.

Sa: 84: 267

Averment. **It will lye for theſe words,** Thou haſt ſought the blood of thy Husband, and waſt his death, for if thou hadſt been an honeſt Woman, hee had been alive yet, Croo. 1. part laſt publiſht. 239. **But in this Caſe in the Action brought, the Plaintiff muſt averr that he is dead.**

It is held it will lye for this, He came to ſuch a houſe, where one lay ſick upon his bed, and got

got upon the bed, and with his knee did break his blood-bulk, and that thereby he had killed him. See Bulſtr. 1. part. 42.

So it is ſaid it will lye for this, to ſay, A. is a Felon, **and one ſtanding by ſaid,** Take heed what you ſay, **and then hee ſaith,** Is not hee a Felon that knew of a Murder and concealed it. And he knew of the Murder of A. B. and did not reveal it till long after it was openly known. In Yelvertons Rep. 154. Concealing Murder. Sect. 2.

So for this, where two or three Colliers were burnt in a houſe, and ſome were executed for it, and one ſaid of the Plaintiff, Thou didſt bring Faggots a mile and a half to the burning of the Colliers. **It is ſaid an Action will lye for this.** In Huttons Rep. 122.

So for this, There was a man killed in the houſe of A. and ſhe concealed the Murther. In Stiles Rep. 392. **And yet it is ſaid it will not lye for this,** He is a Felon, for he knoweth of a Murder and concealeth it. Concealing Murder.

So it will lye for this, The Knave, the Apothecary that married my Siſter hath poyſoned my Uncle, and I will have him taken up again to hang him. In Stiles Rep. 245.

So it is ſaid to be held to lye for this, A. B. was found dead, and you killed him. In Hetleys Rep. 70.

It is ſaid, it hath been held to lye for this, One told me that ſhe heard ſay, that Megs wife poyſoned her Husband, in a Meſs of milk, **with this** Averment, that nullus dixit, &c. **It is ſo reported by** Goldsb. 139. Bendloes Rep. 152. **So for this,** A. ſaid that B. did report, that your Wife By Report. Averment.

Wife ſacrificed her childe to the Devil, to make away my mother. Paſche. 15. Jac. Locks Caſe.

Incertainty. It is ſaid, it will not lye for this, Thou doſt lead a life in manner of a Rogue, I doubt not but to ſee thee hanged for ſtriking of Mr. Sydnhams man, who was murdered. Mich. 11. Jac. in Scaccario.

It is ſaid, that it hath been held to lye for this, Keynor is a baſe Gentleman, hee hath four children by his ſervant Agnes, and hee hath killed them, or cauſed them to be killed. In Pophams Rep. 187.

Incertainty. It will not lye for this, A. ſtruck his Cook on the head with a Cleaver, and cleaved his head, the one part lay on the one ſhoulder, and the other part lay on the other ſhoulder. Croo. 2. 184.

Under qualification. Nor for this, If two be ſpeaking of the killing of Hares with Engines, and with reference to this, the one of them doth ſay to him that hath ſo done, Hee is a murtherer; in this caſe the ſubject matter of the diſcourſe ſhews his meaning, and will qualifie the words, that they ſhall not be actionable. Coo. 4. 14.

Certainty in the perſon charged. It is ſaid to have been agreed to lye for this, That where two are talking together of a Suit wherein the Plaintiff and others were Defendants; And in that diſcourſe the Defendants uſed theſe words, Theſe Defendants [Innuendo the Plaintiff and the other Defendants] are thoſe that did help to murder H. Parrer. [Innuendo H. P. lately deceaſed] who was murdered by one T. H. who

who was hanged for it. In Hobb. Rep. pl. 118. **And it was there held, that the words were certain enough as to the persons charged. But if there bee three present, and one say to them,** One of you three killed J. S. **Or if one say,** One of the servants of A. B. **(who hath many servants)** murdered J. S. **this is altogether incertain, and not actionable.** Fleetwoods Case in Hobb. Rep. 375. 351. Incertainty.

It is said, that it hath been held to lye for this. Mrs. Paffield did write a Letter to one to poyson her Husband. In Bulstr. 1. part. 2. **Some doubt of this Case.** Yet see Finches Law. 186. Attempt or indeavour of Murder. Sect. 3.

It is said, it hath been held to lye for this, Thou didst place a Woman in the house of J. S. to the intent to poyson her. In Bulstr. 1. part. 201. Finches Law. 186. **So for this,** Shee would have cut her Husbands throat, and did attempt to do it. **But that it will not lye for the first words.** Lanes Rep. 98.

So for this, A. sent a Letter to my Master, and therein willed him to poyson his wife. Croo. 1. part last publisht 747.

So for this, Thou didst lye in wait to assault me, with an intent to kill [or to rob] me. Mich. 4. Jac. and Pasche. 5. Jac. B. R. See in Bulstr. 2. part. 206. Murreys Case.

So for this, Thou didst procure one to lye in wait to murder mee. See Bulstr. 2. part. 20. the contrary.

So for this, Thou didst hire one to kill me. Trin. 33. Eliz. B. R. Suttons Case. Yet see

ſee Cro. 3. 1. part laſt publiſht. 191. **where the Court ſeemed to hold the contrary to this. And yet there the Court agreed, that it will lye for this.** Tabbot and Gough agreed to have hired a man to kill mee; And that Gough ſhould ſhew mee to the hired man to kill mee. See the Report of one Murreys Caſe, in Bulſtr. 2. part. 206. **which ſeems to oppoſe this.**

So for this, thou didſt lye in wait to kill mee with a Piſtol. Paſche. 5. Jac. B. R. **So for this,** thou didſt ſend one to kill mee. Trin. 33. Eliz. B. R. Or thou didſt ſend one to my houſe to kill me. Yet ſee Murreys Caſe before named.

So for this, thou ſoughteſt the life of J. S. **If hee be dead.** Mich. 7. Jac. Weblins Caſe. Yet ſee Coo. 4. 15. **So for this,** hee ſought my innocent blood. Sir Edward Hertburies Caſe. B. R. ſee Coo. 4. 15.

So for this, My Lord Lumley hath gone about to take away my life againſt all Chriſtian dealing. Coo. 4. 16. 15. Next Caſe, which ſeems in the caſe and reaſon of it to be againſt theſe caſes.

So for this, My Lady Cockin offered to give poyſon to one to kill the child in her body. 32, 33. Eliz. Coo. 4. 16. See in this Bulſtr. 2. part. 206.

So for this, If I had conſented to Mr. Cardinal, T. H. had not been alive [or had been diſpatcht out of the way.] Cardinals Caſe. Coo. 4. 16.

So for this, A. did prepare poyſon to kill me. Yelvertons Rep. 90.

But

But it is ſaid, it will not lye for this, Sir Francis Beamont did come to the houſe of Sir John Harper, and that hee and his ſervants went about to kill Sir John Harper, and that he did maintain them, and that Sir John Harper may not have this Action for this. But if hee ſay hee did maintain them to that intent, or that any thing were done that way, it might happily be actionable. Bulſtr. 3. part 167.

And ſo generally in all caſes, where the words do import an intent, joyned with any overt Act of Attempt, or Endeavour, there the words will bee actionable. But, a Charge of an Inclination, or Purpoſe only to do a murder without any Act of endeavour or attempt, is not actionable. Coo. 4. 18. And therefore it would not lye for this, He gave his Champion counſel to make a Deed of Gift of his goods to kill mee, and then to fly out of the Country, but God preſerved mee. Coo. 4. 18. Bulſtr. 2. part 206. Inclination or purpoſe only.

And it is ſaid, it hath been held not to lye for this, Thou wouldſt have killed mee. Trin. 4. Jac. B.R. for this is only puniſhable in caſe of Treaſon. Croo. 2. 407. Hobb. pl. 152. 180.

Nor for this, Shee would have cut her husbands throat. Lanes Rep. 98. Bulſtr. 2. part 206.

Nor for this, Hee had a mind to have killed mee. Bulſtr. 2. part 206. Incertainty in words.

Nor for this, He hath killed a man; For this he may do as a Miniſter of Juſtice, or in the wars, or ſe defendendo, &c. Trin. 17. Car. B. R. And yet ſee the contrary before Sect. 1. Croo. 2. 352. 438. Coo. 4. 16. General words

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For

Words general and incertain.

Nor for this, Thou haſt procured a perjured Knave to ſeek my blood. 32. Eliz. B. R. Sir Edward Haſtings Caſe. In Hobb. Rep. 196. 332.

Nor for this, Thou wert the death of J. S. or, thou waſt the cauſe of his death; or, thou waſt the cauſe that hee hanged himſelf, or cut his own throat. Croo. 1. laſt publiſht. 239. See in Hetleys Rep. 70.

Nor will this Action lye for ſuch words as theſe, Thou ſeekeſt my life. Coo. 4. 15. Yet ſee before ſome Caſes, that ſeem to contradict this. Nor for this, He ſeeketh my blood. Sir Edward Hurtburies Caſe. See March of Slanders. part. 2. 6. Nor for this, Thou wenteſt about to poyſon a child. Eatons Caſe. Nor for this, He ſmells of the Murther of J. S. Dyer. 317. Nor for this, To ſay of one that is dead, J. S. was the cauſe of his death, and I will ſwear it on a Book. And yet if the diſcourſe which occaſioned the words, were about the Murther of him that is dead, the words are more dangerous. Bulſtr. 2. part. 10, 11.

For in all theſe latter Caſes the words are too general and incertain to maintain the Action.

Sect. 4.

It is ſaid, it will lye for theſe words, Thou haſt poyſoned J. S. And this albeit hee be alive, or it appear hee is alive. For poyſon may break out upon him, and hee may eſcape. In Bulſtr. 1. part 42. In Yelvertons Rep. 21.

Poyſon.

So for this, Thou didſt poyſon J. S. and it ſhall coſt mee a hundred pound, or I will hang thee for it. New Book of Entries. 25.

Yet

Yet ſee Hobb. Rep. pl. 11. And there it is held, that it muſt be ſaid, that hée did it willingly, or it is not actionable.

It is ſaid, it will not lye for this, A.B. gave C.D. money to ſhift him away as ſoon as he had killed R. T. Parrants Caſe. B.R. Query of this.

But it is held, that the Action will not lye for theſe words, Thou haſt killed my Wife, and art a Traitor for it. Nor for ſaying, thou haſt killed thy Wife; for the words import that ſhée is alive at the time of the words ſpoken. But otherwiſe perhaps it may be if ſhée be re vera dead, and the Plaintiff do ſet it forth to be ſo in his Declaration. Coo. 4. 13. 16. Hill. 39. Eliz. Co. B. Bulſt. 3. part 167. Paſche. 5. Jac. B. R. Holt and Taylors Caſe. So it is in other Caſes when it doth not appear in an Action brought for ſuch words importing a Charge of killing another, that the party it is ſaid hée killed was dead at the time of the words ſpoken. In Hobb. Rep. 8. Trin. 17. Car. 1. Co. B. Words of contradiction.

Nor for this, Thou art a blood-ſucker, and ſeekeſt my blood. Nor this, He is a blood-ſucker, not worthy to live in a Common-wealth, and his child not born is bound to curſe him. As it is reported by Noy 64. and in Popham. 177. Blood-ſucker.

Nor for this, Thou art a cut-throat. In Bulſtr. 3. part. 265. Cut-throat.

Nor for this, Thou art a companion of cut-throats. Croo. 1. laſt publiſht. 554.

But upon this Head this alſo is to be known.

1. That

1. That in some of the Cases, and for some of the words herein said not to be actionable, if so it be, that the party of whom they are spoken, have any special damage by them, he may perhaps in such a case have an Action for the words.

2. In all the Cases before named, and in other Cases of like nature with the words before mentioned, that are actionable words, the Plaintiff is not bound to set forth in his Declaration any special losse he hath sustained by the words, for the Action is maintainable without it.

3. That in all the Cases of actionable words, they must be under the general Rules, viz. the words they must be false, malicious, particular, univocal, positive, and certain, and such as import some Act done. For if they do not appear to be so, but they be true, or spoken in a way of Justice, or the like, that they appear not to be malicious, or be altogether incertain, either in the person, or thing, or be under a qualification by other words spoken at the same time, or import only an intent to do something, but nothing is done, or the like, no Action will lye upon them.

4. That the Plaintiff in his Action brought for such words as these, is not bound to say, or set forth that the Charge by the words did import a malicious, voluntary, or willing Murder, or that the party said to be murthered, is dead, or died within the year. But this is certain, That where the Action is brought for words of import, to charge the Plaintiff with

with the killing of a man, it will be the ſure way for the Plaintiff in his Declaration, to ſhew that he is dead, and was ſo when the words were ſpoken. Or if he do not ſo, then it will be the wiſdom of the Defendant in his pleading, to ſhew he is yet alive, or was alive when the words were ſpoken; for then no Act will lye upon them. Coo. 4. 16. Croo. 2. 252. Yelverton. 20. 21. Croo. 1. part laſt publiſht. 823. Croo. 2. 438. Bulſtr. 1. part 42. Hobb. Rep. pl. 11. New Book of Entries. fol. 24.

CHAP. VIII.

Of words of Slander, about Matter of Witchcraft.

This offence of Witchcraft, by the uſe of Invocation, or Conjuration of evil Spirits, to take up any part of a dead perſon to be uſed in any Witchcraft, and uſed to kill, or lame any perſon is Felony. To take upon one by Witchcraft, and ſuch like waies, to diſcover any thing loſt, or any treaſure, to provoke to unlawful love, or to deſtroy, or hurt any perſon, cattle, or goods, is a great offence and very penal: If any man therefore ſhall by ſlanderous words, charge another with this Crime, or any thing like unto it, hee may have this Action for his remedy. Stat. 1. Jac. chap. 12. Coo. 13. 59.

Witchcraft, what it is. Sect. 1.

And therefore it is held; that this Action will lye for the words as they are mentioned, in the Cases hereafter following.

Witch. Some of the Judges have from time to time been of opinion; that this Action will lye, for calling of a man or woman Witch; or saying, he, [or she] is a Witch, without the Addition of any other words to it: And some Judgements are said to be given accordingly. For which see, Croo. 2. 306. 150. 639. 531. 205. In Godb. pl. 435. But the main current of the Judges opinions and judgements are the other way, and the Law (as it seems) is now taken to be; that this Action will not lye for saying one is a Witch, without the addition of some other words, importing that he hath bewitched some Person, or his goods, &c. For which see, Fitzh. Law 126. Croo. 2. 399. 150. 205. 236. 53 660. Croo. 1. 233. 205. 236. 340. 233. In Godb. Rep. 257. 341. 17. Jac. Hawks Case. M. 8. Jac. B. R. Shirdens Case. Brownl. 2. part 14. Bendloes Rep. 23. 127. Hellenas Case. Stiles Rep. 11. 47.

It is said, to be adjudged, to lye for the words in the Cases hereafter next following. That is to say, The Devil appeareth to thee every night in the likeness of a black man, [or a black horse] and thou conferrest with him, and he giveth thee what thou askest, and therefore thou hast so much mony. Marshals Case, by Hobb. pl. 137. 162.

But it is doubted whether it will lye for the words in the Case, next hereafter following, that is to say,

Thou art a Witch, and wert the death of such a mans

a mans childe, at whose birth thou wert Midwife. In Godb. Rep. 341. Bendloes Rep 127.

And so whether it will lye for this; Thou art a hagg. in Hobb. Rep. 155. Hagg.

And so whether it will lye for this; Thou art a Witch, and hast bewitcht my wives milk. Croo. 2. 600.

And so whether it will lye for this; A. did bewitch my good man, Innuendo my Husband. Stiles Rep. 106. Incertainty.

And so whether it will lye for this; Thou hast bewitched one. Stiles Rep. 106.

But there it is the opinion of two Judges, that it will lye for saying; Thou hast bewitched a man. Stiles Rep. 106.

And for these words it is said it will lye; thou art a Witch, and didst bewitch my Mothers drink, and being asked after why shee did it, shee said, If I have called her Witch, wee will prove her a Witch, and answer what we have done. Hughes Case, Croo. 1. part 100. Sect. 2. Witch.

And for this, thou art a Witch, and hast bewitched J. S. to death. Croo. 1. 100. Godb. 341. Croo. 1. 341. **And for this,** hee is a Witch and an Inchanter, and hath bewitched the children of one Strong. Hutton. Rep. 13. yet see Bendloes 127. **And for this,** thou art a Witch, and thou hast bewitched children that they are wasted and destroyed. Stones Case, Brownl. 1. part 2. 7. Croo. 1. part. 341. Huttons Rep. 13. **And for this,** He is a Witch, and a strong Witch, and hath bewitched me and my Aunt A. S. Ceelies Witch and Inchanter.

Caſe. Croo. 1. 341. Stiles Rep. 106.

And for this, Thou and thy Wife [Innuendo, the Plaintiff and Agnes his Wife [are both Witches, and have bewitched my Mare [Innuendo, the Mare previt. Thome.] whereas it ſhould have been, predict. Richardi. Tho. Smith verſus Cooker. Croo. 1. 368.

Witch and Sorcerer.

And for this, Thou art a Witch and a Sorcerer. Croo. 1. laſt publiſht. 571. And for this, She hath bewitched J. S. by Witchcraft and Socery. Croo. 1. part 189. Goldsb. 341.

And for this, Thou art a Witch, for thou haſt bewitched my Cow. Savils Caſe. Stiles Rep. 59. 65.

Averment.

And for this, J. S. is a Witch, and hath bewitched two of the ſervants of J. S. to death, and there held that the Plaintiff need not to aver that any perſon is dead, or how he did bewitch. Croo. 2. 639.

And for this, Thou doſt work by Nigromancy, and doſt work by the Devil. Yelvertons Rep. 150.

And for this, Long is a Murtherer, and hath bewitched my child, and was the death of my child. Mich. 23. Car. B. R. in Stiles Rep. 65.

And for this, Thou art a Witch, and dealeſt with Witchery, and didſt procure Mother Rale to bewitch the Cattle of J. S. Hill. 20. Jac. See in March of Slanders, 1. part 15.

Certainly.

And it is ſaid it will lye for this, Thou haſt killed a man by Witchcraft, and that this is certain enough. Stiles Rep. 106.

But it is reported, and ſaid to be held, that this

this Action will not lye for the words in the Cases hereafter following (that is to say) for saying of J. S. That he is a Sorcerer and Inchanter. Muttons Case. Coo. 13. 59. Brownl. 2. part. 276. Sorcerer and Inchanter.

Nor (as it seems) for saying of a man, He is a Conjurer; but if he saith, He is a Conjurer of the Devil, or, of any evil or wicked spirit, the words are more dangerous. Godb. Rep. 341. and yet some have held the contrary, and that all these words are Actionable, because they do, as the Witch doth, deal with the Devil, the one by agreement, the other by prayer, and such like means. Some would have it for to lye for calling of one Hag, others doubt of it. Hobb. Rep. 155. Conjurer. Hagge.

Nor for this, Thou art a Witch and Inchanter, and hast bewitched Strongs children. Brown. 1. part 2. 7. Witch and Inchanter, Witchcraft.

Nor for this, He hath bewitched my Weare that I can catch no Fish.

Nor for this, Thou art a Witch, and hast bewitched my childe. Mellon versus Hern. Godb. 341. Stiles Rep. 11. 66. 59. Huttons Rep. 132.

Nor for this, Mary Yates is a Sorcerer and a Witch, and a White Witch, she can bewitch and unbewitch. Stiles Rep. 47. Sorcerer and Witch.

Nor for this, She is a Witch, and I will take my oath of it. Turners Case. Stiles Rep. 47.

Nor for this, Thou art a Conjuring Knave. Bulstr. 1. part 138. Conjuring Knave.

Nor for this, Thou art a Witch, and a strong Witch, Croo. 205. 236.

Nor for this, Thou art a Witch, and by thy means I have lost my Mare. Hawks Case, Croo. Rep. 2. 531.

Nor for this, Thou art a Witch, and I will make thee come and say, God save my Mare; I was forced to get my Mare charmed for thee, Croo. Rep. 1. 233.

Nor for this, Mr. Lowes is a Witch, and I will prove it, for I have seen him, and his imps, and evil spirits appear unto me in my chamber, and put me in fear of my life; and he said, Come, he will never be at quiet till we have killed him, and he did bewitch a childe of mine. Lowes Case, Bulstr. 3. part 74.

Sect. 3. But upon this Head, these things are also to be known.

1. That for these, and such like words before mentioned therein, that are not actionable, that albeit the words in themselves are not actionable, yet if any special damage shall come thereby to him of whom they are spoken, he may happily have this Action for them. Croo. 2. 202.

Averment. 2. That for all the words herein before mentioned to be actionable in themselves, and for all such like words, this Action will lye, without Averment of any special losse sustained by the party of whom they are spoken. Croo. 1. 101. See March Rep. pl. 2. 93.

3. That such kind of slanderous words as these are, must be under the general Rules before laid down, Malicious, false, certain, &c. For if they be true, or not malicious, too general, of a double intendment, or doubtful meaning, or not sufficiently positive, or altoge-

ther

ther incertain in themſelves, either as to the perſon of whom they are ſpoken, or in the thing ſpoken of that perſon, or under a Qualification by the precedent or ſubſequent words ſpoken at the ſame time, or import an intent only of doing an act, and no act done, they may not be actionable.

CHAP. IX.

Of words of Slander about Rape, Sodomy, Buggery, and Houſe-burning.

The Raviſhment of a Woman is by the Law a very great Offence, and very penal, and therefore if any man ſhall charge another with this Offence, or any thing like unto it, the party ſlandered hereby ſhall have this Action for his Relief therein. Stat. 13 Eliz. chap. 6. 39 Eliz. chap. 9. and therefore it hath been held, That an Action will lye for the words in the Caſes hereafter following (that is to ſay) for ſaying, Thou didſt raviſh I.S. and for this, He ſhould have been hanged for a Rape, and it coſt him dear. M. 39, 40 Eliz. B. R. Redfernes Caſe. Croo. 1. part laſt publiſht, 589. And for this, He is raviſhing of I.S. Croo. 1. 101. And for this, Thou [Innuendo the Plaintiffe] haſt raviſhed a woman twice, and I will make thee to ſtand in a white ſheet for it. In Godb. Rep. 287. Rape.

Sodomy in the eye of the Law is a great Crime, and very penal; and therefore if any man ſhall ſlanderouſly charge another with this, or any thing like unto it, this may be actionable, 25 H. 8. cap. 6. 5 Eliz. cap. 17. Coo. 12. 37. and therefore this Action will lye for calling Sodomy.

of

Sodomite. of one Sodomite, or for saying, He hath committed Sodomy. Coo. 10. 130. and 4. 15, 16.

Buggery. The like may be said of this offence of Buggery, and of words scandalous about it; and therefore it is held that this Action will lye for calling of one Buggerer, or saying of one,

Buggerer. That he hath committed Buggery. Coo. 10. 130. and 4. 15, 16.

House-burning. The burning of any dwelling House, or Barn full of Corn, or any Out-house adjoyning to such dwelling House or Barn, is also by Law Felony, and very penal to the Offender; and therefore if any man shall slanderously charge another with this, or any thing like unto it, this may be actionable; this Action is therefore said to lye for saying, Thou didst burn a dwelling House, or thou didst burn a barn with corn: But it will not lye for saying, Thou did burn a barn, or thou didst burn a barn with thine own hands. Nor may such words bee made Actionable by enforcing it with an Innuendo in the Declaration, Innuendo a barn full of corn. Adjudged New B. of entries. fol. 25. Coo. 4. 14. 20. In Yelvertons Rep. 21. Bulstr. 1. part 112. Croo. 2. 184. Hobb. Rep. 196. 332. 350. And yet it hath been adjudged to lye for this, B. is a bad minded man, and none but he did burn my fathers barn; and he doth use to set fire of barns about Michaelmas, when they are full of corn. In Noys Rep. 155. And see in a Case where two or three Colliers were burnt in a barn, and some were executed for it; where one said of J. S. Thou didst bring fagots a mile and a

half

half, to the burning of the Colliers. Huttons Rep. 122. But it is said it will not lye for this, Thou hast burnt my barn, for which thou wilt bee hanged. In Bulstr. 3. part. 267.

In an Action for these words, I am sure that A. B. did burn my Barn, Innuendo a Barn full of Corn, and I will have a bout with him for it; If my Lord Cheif Justice would have done mee right, I would have hanged him for it; in this Case the Judges did most incline, that the words were not Actionable. Croo. 1. part last publisht 834.

It is said, it hath been adjudged to lye for this, He hath harboured and received his Son into his house, having notice of him before that he was a Seminary Priest; for this is Felony, see in Bulstr. 1. part 181. About the receiving of a Priest.

And here this also is to be added to all the Cases before laid down in this Chapter, as in the former Chapters; That in Cases where one shall slanderously charge another with any Crime made Felony by any Statute Law, or with any thing like unto it: As with the having of two wives, the Imbezelling or razing of Records, the wilfull putting out of a mans eyes, or cutting out his of tongue, the Levying of a fine, or acknowledgment of a Statute in another mans name, conveying away of the Kings Ordnance, or Armour, or the like, this Action may be maintainable for it.

And in all such Actions, the Rule before laid down in the Actions for Slanders about matter

matter of Murder, do hold place here.

1. That if the words import any great slander, and be not in themselves actionable; yet if any special damage happen to the party of whom they are spoken, by them; they may by this become actionable.

2. That in Actions for such words as these, there will not need any Averment of special damage by them.

3. That if the thing said be true, or not maliciously said, or too general, of a double intendment, or of a doubtful meaning, or not sufficiently positive, or altogether incertain in themselves, either as to the person slandered, or the slanderit self, or under a qualification by the precedent or subsequent words spoken at the same time, or import an intent only of doing an Act, and no Act done, they may not be actionable.

CHAP. X.

Of words of Slander about matter of Theft.

Theft, what it is. Sect 1.

AS to Slanderous words that have an Import in them of any matter of Theft, we are to know, that Theft is the unlawful taking away of another mans goods from him against his will, and this is a great offence and very penal: For by the greater Felony, which is the stealing of any thing above Twelve Pence in value, the offender doth in many cases lose his life, and all his estate by it. And by the lesser Felony, which is the felonious taking of any thing under the value of twelve pence (which is called Petit Larceny) by this he will forfeit

Petit Larceny.

all

all his goods; and become liable to such corporal punishment of whipping, and the like, as the Judges shall appoint. If therefore any one shall charge another falsly with any crime of this nature, hee may have his remedy by this Action. It is therefore said to be agreed, that this Action will lye for these words, and as they are set forth in the Cases hereafter following, viz. for calling of a man Sacriledger, or Church-robber; or for saying, Thou hast committed Sacriledge, or, thou hast robbed the Church of Dale. Pasche. 5. Jac. B. R. Sacriledge & Sacriledger. Church-robber.

So it is said, it hath been held maintainable for these words, A. is robbing the Church of S. Or, Thou hast robbed the Church of S. Croo. 1. 301. Dr. Sibthorps Case. But for saying, Thou hast robbed the Church, without more words, it seems no Action will lye, for the incertainty of the words, what Church hee intended, a Visible, or Invisible Church. And yet to say of one, That he hath robbed a Church, is conceived, may bee actionable, and that it shall be intended to be spoken of a material Church. See in March. of Slanders. 1. part 48. Incertainty.

It is said to be adjudged to lye for this, Thou hast robbed the Church of A. and thou hast stoln the Lead from off the Church [Innuendo the Church] of A. M. 4. Jac. Benson and Morleys Case. Croo. 2. 153. But that it will not lye for saying, Thou hast robbed the Church of Dale, for thou hast stoln away the Lead of it. Coo. 10. 130. 4. 15. Croo. 2. 153.

It is said, that this Action will lye for this, He hath robbed a Church, not saying what Church,

Church, as the Church of Dale, &c. and that an Innuendo may make it certain. Croo. 1. 301. Croo. 2. 154.

Piracy. Pirate. This action (it is ſaid) will lye for calling of one Pirate. Or for ſaying of him, He hath committed Piracy. So for ſaying, Thou maintaineſt Pirates, who rob upon the Seas. So for this, Thou art a maintainer of Pirates, and a procurer of piracies. Cro. 2. 629. Coo. 4. 14.

Other Theft. Theef. Robber. Houſe-robber. It is held to be out of queſtion, That this Action will lye for calling of one Theef, Robber, or Houſe-robber. So for ſaying of one, He hath committed a Robbery, or, he hath committed a Burglary. Coo. 10. 130. 27. H. 8. 11. 14. Dyer. 112, 236. Croo. 1. 329. In Owens Rep. 33. 47. In Noys Rep. 10. 20. Sheep-ſtealer. So for this, Thou art a Sheep-ſtealer. Horſe-ſtealer. So for this, Thou art a Horſe-ſtealer, In Bulſtr. 3. part 303. 260. In Bendloes Rep. 154. So for ſaying, Thou art a Welch-Theef. Croo. 1. 329. So for this, A. hath ſtoln my Sheep. In Huttons Rep. 8. So for this, A hath ſtoln Sheep. So for this, A. hath ſtoln Sheep from B. C. 27. H. 8. 22. N. 26. H. 8. 9. pl. 11. So for this, Thou art a Roguiſh Knave and a Theef. Bulſtr. 2. part 134. So for this, Thou didſt ſteal the Horſe of J. S. In Hobb. Rep. pl. 196. So for this, Thou art a cunning Theef. Bulſtr. 1. part 146. 210. So for this, He is a Theef to you, and to me, and hath ſtoln twenty pound from me, and forty pound from you. Croo. 2. 676. So for this, Thou didſt meet me on the way,

way, and askedſt my purſe, and I gave thee five ſhillings for fear. Bonds Caſe.

So for this, A. did ſet on me, and took my purſe from mee, not saying in the high-way.

So for this, Thou didſt ſet up on me in the high-way, and didſt take away from me my purſe, and I will be ſworn to it. Stoners Caſe. B. R.

So for this, Thou didſt ſet upon me, and tookeſt away my purſe, with twenty marks in it, go with me before a Juſtice, and I will charge thee with Felony. Lewis Caſe in the Chequer Chamber.

So for this, Thou didſt violently upon the high way take away my purſe from me, and four ſhillings two pence in it, and didſt threaten me to cut me off in the midſt, but I was forced to run away to ſave my life. Lawrence Caſe. Croo. 1. 102. M. 8. Car. 1. B. R.

It is ſaid it will lye for this, He hath robbed J. S. And this albeit J. S. were never robbed. Mich. 9. Jac. B. R.

So for this, He is a Theef, and hath ſtoln my gold. Albeit he do not ſay when he did ſteal it. Croo. 2. 622.

So for this, Thou didſt ſteal my Horſe, and waſt in Gaol for it. Hobb. Rep. 196.

So for this, He hath ſtoln a Horſe, and it will be proved by twenty witneſſes. Hares Caſe.

And yet it is ſaid, it will not lye for this, Thou didſt take away my mony [or the mony of J. S.] Hobb. Rep. pl. 11. 106. 332. 350.

350. Croo. 2. 184. Brownl. Rep. 1. 2. Coo. 4. 15. **Nor for this,** Thou haſt ſtoln by the high way ſide. Davis Caſe. Paſche. 38. Eliz. Goldsb. 143. Bulſtr. 1. part 112. **Nor for this,** Thou didſt beat mee, and took away my purſe from mee. 37. Eliz. Co. B. March. of Slanders. 1. part 47. **Nor for this,** Hee did aſſault mee, and take away my money. Bulſtr. 1. part 112. **Nor for this,** Hee took away money from him with a ſtrong hand. Mich. 15. Car. B. R. **Nor for this,** Thou didſt take away my money with a ſtrong hand. Bulſtr. 1. part 112. March. Rep. pl. 91. **And** Innuendo Felony **in the Declaration will not alter the Caſe.** Godb. Rep. 181. **Nor for this,** Thou didſt take away my purſe, and twenty ſhillings in it. Hobb. Rep. pl. 268. **So for this,** Thou didſt ſet upon mee in the high-way, and take my purſe from mee, and twenty marks in it, and I will be ſworn to it. Croo. 2. 315. Holland and Stoner. Bulſtr. 1. 112. **for there is no certain charge of Felony in it.** Hobb. Rep. pl. 268. 382. See in March. Rep. pl. 91.

Innuendo.

Sect. 2. * **Nor for this,** I have a matter againſt A. who hath ſtoln by the high-way ſide. Croo. 1. part laſt publiſht. 459. See of this more upon the incertainty of the charge. Afterwards in this chap.

* **It is ſaid, the Action will lye for this,** Thou haſt ſtoln my goods, and I will have thy neck. In Brownl. 2. part 230. 280. **So for this,** Thou art a Theef, for thou haſt ſtoln my Cock. In Brownl. 1. part 1. Or, thou haſt ſtoln my two Cocks [or my two Hens, [or my other goods.

goods. Trin. 5. Jac. B. R. Benſers Caſe.

So for this, You, huſwife, are a Theef, and have ſtoln my purſe; **and it was ſaid, that there was certainty enough in it.** Stiles Rep. 150. Certainty.

So for this, J. S. did load a Ship of my Maſters with Barley, and did ſteal and couzen ſeven quarters thereof in meaſure. Mich. 20. Jac. Co. B. Winch. 41. See Winch. 202.

So for this, Thou haſt ſtoln Plate in Cambridge, and wee will charge thee with Felony for it. Wilb. and Gunning. 2. H. 7. 16.

So for this, Thou haſt ſtoln a Sack, and a Curry-comb, and I will make thee produce it. And thou didſt ſteal my Fathers Wood, and give it to a Whore. Brownl. Rep. 2. Hobb. Rep. 192. Skarlets Caſe.

So for this, Thou art a Theef, and haſt broken my Cheſt. In Stiles Rep. 115. Wainwrights Caſe. Trin. 24. Car. B. R.

So for this, Thou art a Theef, for thou haſt ſtoln the Town-beam [Innuendo **the Town of** W. per Serjeant Hutton. Brownl. 3.

So for this, Thou art a ſteal-gown, and the firſt Gown that thou didſt wear thou ſtoleſt, and thou didſt walk up and down in the ſtole Gown, and hadſt no Gown till thou didſt ſteal one. New Book of Entries. 23. D. Sect. 20.

So for this, A. hath ſtoln my Axe from my Wood-pan. Edwards Caſe, in Stiles Rep. 213.

So for this, That he ſtole two or three pound of Tobacco out of his Maſters ſhop, and

and yet there it is ſaid that it will not lye for this, He ſtole the Tobacco out of his Maſters ſhop, without a ſpecial Averment that there was To-
Averment. bacco there, and what it was. Wotherlies Caſe in Winchel. Rep. 6. 15.

So for this, Thou art a Thief, for thou haſt cut off the Ear-mark of my ſheep, and ſet on thine own. See in March of Slanders. 2. part 4.

So for this, Thou wouldſt have ſtole a peice of cloath, or elſe thou wouldſt have delivered it to my Wives daughter, thou art a thief, and an arrant thief, and I will prove it. In Goldbs. Rep. 85. So for this, A. is robbing of J. S. Croo. Rep. 1. 101.

✗ So for this, A. is as very a Thief as any that robbeth by the High-way ſide. So for this, A. is a worſe thief than any that robbeth by the high-way ſide. Croo. 1. laſt publiſht. 224.

✗ So for this, to ſay of one ſuſpect, and proſecuted for ſtealing of a Horſe, That he did ſteal him; for common fame of a man that he is a Thief, will not warrant any man to call him ſo, or to ſay, He is a thief. Mich. 13. Jac. Co. B. Cuddington againſt Wilkins. See Hobb. Rep. pl. 105. 112. 238. 381. So for this, There is a great neſt of Theeves at Pinton, and Sir John Bridges is the maintainer of them, and hee is a Thief himſelf, Dyer. 75.

Manner of the ſpeaking. So for this, J. S. was queſtioned for ſtealing of a gray Mare with a ſnip in her ear, and Hue and Cry went out after him, and he durſt not ſhew his face hereabouts. Stiles Rep. 159.

So

So for this, I did meet J. S. and others ſuch a day in ſuch a place, and they bid me deliver my purſe, and I being afraid, put my hand in my pocket, and took out two ſhillings ſix pence, and gave it over my ſhoulder to one of them, I know not which, **it will lye for J. S. but not for any of the reſt.** Yelvertons Rep. 148. Incertainty in the Perſon ſlandred. Sect. 3.

So for this, Take heed how you lodge J. S. for he takes Purſes. By two Judges. Bulſtr. 1. part 112. **So for this**, Thou art a Roguiſh knave and a theif. Bulſtr. 134. **So for this**, Thou art a cunning thief. Bulſtr. 2. part 146.

So it is ſaid to lye for this, You do not well that you do not apprehend J. S. for a felon, and ſeize his goods, for he hath ſtole a ſheep from A. B. Croo. 2. 126. **So for this**, He would have robbed me, and did rob me of my Dagger Bulſtr. 2, part 227.

It is ſaid it will lye for this, There is not a Purſe cut within twenty miles but J. S. knows of it, and hath a ſhare in it. Balls Caſe. Cut-purſe.

So for this, Thou art a cunning Cut-purſe Knave. Trevillians Caſe, B. R. **But not for this**, He is a cunning Cut-purſe; **Nor for this**, He is a cunning Knave and acquainted with more Cut-purſes than any man in Northamptonſhire. Bulſtr. 1. 147. Croo. 2. 536. Godb. Rep. 181. Pick-pockets.

Nor for this, Thou haſt cut my purſe, therefore I charge thee with Felony; **but if he ſay** Thou haſt cut my Purſe Felonioufly, **it may perhaps be otherwiſe.** Croo. 1. part laſt publiſht, 890.

It is ſaid to lye for this, Thou haſt taken

out of my Pocket forty pound of my Mony, and I will cauſe thee to be indicted at the Seſſions of the Peace, and to hold up thy hand at the Bar for it. **But that it will not lye for this,** He hath picked out of my pocket ſilver and gold. Croo. 1. part 238. Yelverton 136. Dromants Caſe; or taken out of my pocket ſilver and gold, or picked my pocket, and taken away ten ſhillings. Stiles Rep. 127. Croo. 2. 498. **And yet it is ſaid it will lye for this,** Thou haſt picked my Pocket, Quere thereof, and ſee Croo. 1. 238. In Godb. 287. pl. 413.

Pilferer, and Pilfering fellow.

It is ſaid it will not lye for this, He is a Pilfering fellow, and hath Pilfered away my corn and goods from my wife and children. Huttons Rep. 14. Owens Rep. 56. Carters Caſe. M. 37, 38. Eliz. B. R. Croo. 1. laſt publiſht 424.

A Prigging fellow.

Nor for this, He is a Prigging Pilfering fellow.

Filcher, and Filching fellow.

Nor for this, Thou art ſuſpected to be a common Pilferer.

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Nor for this, Thou art a Filching fellow, and haſt Filched away Ten pounds from me. Hobb. Rep. pl. 323. Croo. 4. 15.

Nor for this, Thou art a common Filcher. Croo. 1. laſt publiſht 554.

For ſtrange words uſed in ſome Countries.

This Action will lye for theſe ſtrange words, where the uſe and meaning of them is known; Thou art a healer of Felonies, and haſt ſhewed ſuch a favour to a Horſe ſtealer, that thereby both the Horſe and Theef were conveyed away, and it is in my power to hang thee. Yelvertons Rep. 153. Hobb. Rep. 191.

Healer of Felons.

So for this, Thou art a healer of Felons. Hobb. Rep. 191.

Sheep-theef.

So for this, ſpoken before them that know the uſe of it; Thou art a Sheep-Theef.

So

So for this, Thou art an Out-putter. So for this, Croo. 1. last publisht 250. Bulstr. 2. part 145. Brownl. 1. part 13. Hobb. Rep. 350. Outputter.

And this also (as it seems) without any Averment in the Declaration, that the sense of the words is so and so; for this may be proved at the Tryal by Witnesses. Mores Case. Jac. B.R. Hughes Abridgement page 37. part 47. Strained a mare. Averment.

And yet some hold this Averment necessary. Brownl. 1. part 13. Croo. 1. 96. Benloes Rep. 134. Stiles Rep. 296. March. Rep. 1. 18.

So it is said it will lye for this for the Father, Barber and his wife be false theeves, men cannot have their cattle go upon the Common, but they will kill them and eat them. Barbers Case.

So this Action (it is said) will lye for this, A. hath half my goods, and shall be hanged for it. 8. Jac. B. R. Long and Kings Case. Sed Quere of this. For it is said, it will not lye for this; I had Fourty Pounds worth of Plate, and A. hath it, and will be hanged for it. Trin. 12. Jac. Kings Case.

So it lye will for this, He is not fit to be a Constable, for he and his company, the last time he was Constable, stole five of my Swine, and eat them: But it will lye only for him that is the Constable, and not for any others. Croo. 1. last publisht 861. Incertainty in the person slandered.

So it is said, it will lye against a husband and wife, for these words spoken by the wife, Mr. Plunket did Steal my Plate out of my chamber. And yet in propriety of speech, it was not hers but her husbands Plate. Croo. 1. 38. and 2. 60. By improper words. Sect. 4.

So for this said by a wife, Thou art a thievish Quean, for thou hast stoln my Faggots, Innuendo five Faggots of the defendants husbands. Croo. 1. 88. and 2. 60. So for this spoken by the wife of another, Thou hast stoln my two Cocks. Mic. 9. Jac. B. R. See Croo. 1. part. last publisht 279. Charnels Case. B. R.

Certainty and Incertainty of the person slandered. Averment.

It is said that this Action will lye for this said to a Father; I will take my oath that your Son stole my Hens? So it be with this Averment in the Declaration, that the Plaintiff is his Son, and that hee hath no other son, or that the words were intended of him that brings the Action by some other words spoken at the same time. Mic. 15. Car. B.R. Stiles Rep. 46. So for saying of J. S. That he was one of those that robbed J. S. Goldsb. 85.

Averment.

So for saying to the Son, Thy Father is a Theef, and hath stolen more goods then I am worth; this will lye for the Father and that without Averment of what hee is worth that spake the words. Bulstr. 2. part 141. Painters Case. Mic. 11. Jac. B. R.

So it is said, it will lye for a Boy that is present for these words said of him, This Boy is a Theef. Brownl. 1. part 2.

So if two be talking together of John Syms and William Syms, and one of them saith, These Symses are Theeves, otherwise it is if he say, The Symses are Theeves. In Hages Rep. 39.

This Action (it is said) will lye for the Father, where these words are said to the Son, Thy Father hath stoln such goods. So it will

will lye for a Husband, where these words are said to the Wife, Thy Husband hath stolen such goods; and that without any Averment at all. But in Cases where it is said to a Father of a Son in general, no Action will lye for a Son, without some special Averment, that hee hath no other son, or that the Son that brings the Action was intended in the words. Croo. 1. 127. and 2. 443. Averment.

It is said it will lye for this, I have a Son in A. who had his Chest picked, and a hundred pound taken out of it in the house of one B. and I think I have found the Theef, who it is; it is one that dwelleth in the next house, called Robert Kingston; If there be such a man there, hee may perhaps have this Action, but then hee must aver that hee doth dwell in the next house. Pasche. 7. Jac. B. R. Averment. Averment.

So it is said, it will lye for these words, Pritchards man hath robbed me. But then the Plaintiff must in his Action insert this Averment, that hee was Pritchards man, and that hee had no man but him, or that the conference was about him, &c.

But it will not lye for this, said of any one without any precedent Communication of any person incertain, One that is mine Adversary is a Theef. Nor for this, One that is neer about J. S. is a theef. For the incertainty of the person slandered. Coo. 4. 17. Hobb. Rep. 375. pl. 35. Nor for this, One of the servants of J. S. is a theef, if hee have more servants than one. Hobb. Rep. 351. 371. Coo. 4. 17. Croo. 1. 127. Brownl. 1. part. 1. 7. 9. 10. 13. Incertainty of the person. x

* Certainty and incertainty in the matter of the Slander. Innuendo. Sect. 5.

It will not lye for theſe words, You have committed Burglary in breaking of his houſe [Innuendo the houſe of one Bennet] and ſtealing his goods; **For this may be but treſpaſs. And it is not ſaid, whoſe houſe he brake; but by the Innuendo, which is not ſufficient to make it certain.** Croo. 1. part laſt publiſht. 889.

For for this, He is as arrant a Theef as any in England, and broke up the cheſt of J. S. and took away forty pound out of it. Huttons Rep. 72. Yelverton 90. Croo. 2. 687. Foſter and Browning.

For for this, Thou art drunk, and I never held up my hand at the Bar, as thou haſt done. **For for this**, Thou waſt arraigned for Felony &c. **For for this**, Thou didſt hold up thy hand for Felony. **For for this**, Thou waſt in the Goal at G. for robbing, &c. **For for this**, Thou didſt take away my mony. **For for this**, Thou didſt beat me, and take away my mony. **For for this**, Thou didſt take away my mony with a ſtrong hand. Bulſtr. 1. part 112. March. Rep. pl. 91. **For for this**, Thou didſt take away my purſe, and twenty ſhillings in it. Hobb. Rep. Lynes Caſe. 268. **For for this**, I have an Action againſt J. S. who hath ſtoln by the highway ſide. Benizens Caſe. 37. Eliz. B. R. Quere of this. Yet ſee Hobb. Rep. pl. 382. a Caſe ſomewhat like to it. **For for this**, Thou art a cut-purſe; **for ſo every Glover is.** Godb. Rep. 181. Trin. 17. Jac. B. R. Croo. 2. 536. Bulſtr. 1. part 147. Pophams Rep. 180. Bulls Caſe.

Cut-purſe.

For for this, A. was robbed of forty pound and

and a hundred marks-worth of Plate, and B. and C. had it it, and for that, by God, they will be hanged for it; for it may be they did not ſteal it, but came lawfully by it; And the latter words, they will be hanged for it, are not actionable. Croo. 2. 302. 331. Bulſtr. 1. part 147. Jenk. Cent. 8. Caſe 92. Bulſtr. 1. part 147. He will be hanged.

Nor for this, A. hath received again his peeces of cloth, and beareth with the Theef, Innuendo quendam malefactorem ignotum. Noys Rep. 57. ✗

Nor for this, A. hath broken my ſhop, and taken away my goods. 29. Eliz. George againſt Parker. In Noys Rep. 57.

Nor for this, Thou art as bad as thy Wife, when ſhe ſtole my Cuſhion, without ſome Averment, that there was ſuch a Felony committed. Croo. 2. 331. Goldsb. Rep. Rep. 242. Averment.

Nor for this. J. S. deſerves to be hanged. Nor for this, J. S. deſerves hanging. Nor for this, It is in my power to hang thee. M. 4. Jac. B. R. Paſche. 38. Eliz. Hollands Caſe. 10. Jac. B. R. Pridhams Caſe. Trin. 16. Car. 1. B. R. He deſerves to be hanged. ✗ I can hang thee.

Nor for this, Thy brother was whipt about Taunton Croſs for ſtealing of ſheep, or burned in the hand, or ſhoulder. Croo. 1. 106. Mich, 8. Car. 1. B. R. Hills Caſe. And yet theſe words import ſomething done, by which the party of whom they are ſpoken had deſerved hanging, &c. Incertainty.

Nor for this, He hath ſtoln a Mare, or, J. S. is forſworn. Paſche. 17. Jac. B. R. Barhams Caſe. And albeit he aver that J. S. did never ſwear any ſuch thing, yet it will not lye. Croo. 2. 530.

Breaker of Houſes.

Nor for this; Thou haſt ſtoln, **without more words**; **And yet if hee ſay**, Thou haſt ſtoln, for which thou wilt be hanged; **theſe words are dangerous**. Bulſtr. 3. 266.

Nor for this, Thou art a breaker of houſes. Mic. 9. Jac. Slaughters Caſe.

Innuendo.

Nor for this, Thou didſt ſteal my Peece [Innuendo, a Gun] and I do charge thee with Felony; **for the word is incertain, and the** Innuendo **cannot aſcertain it.** Bendloes Rep. 126. Wheeler againſt Appleton.

Nor for this, Thou uſeſt me now, as thy Wife did when ſhe ſtole my Cuſhions. Goldsb. Rep. 242. Croo. 2. 331. Quere **If it lye not for the Wife upon theſe words**, when ſhe ſtole my Cuſhions.

Nor for this, Thou haſt ſtoln my Mare, or conſentedſt to the ſtealing of her. **In the** Diſjunctive. Croo. 1. laſt publiſht. 780.

Nor for this, Thou didſt bear away my goods. Hobb. Rep. 236. **Nor for this**, He bore away money. Hobb. Rep. 268. **Nor for this**, Thou didſt take my mony from me. **Nor for this**, Thou haſt theeviſhly taken my mony out of my purſe. **Nor for this**, Thou haſt theeviſhly taken ſuch goods. Croo. 2. 81. Yelvert. Rep. 82. **Nor for this**, J. S. was robbed of twenty pound, and A. had it, and will be hanged for it, by two Judges, Paſche. 9. Jac. Foord verſus King.

Nor for this, He is a Rogue, or a Theef, or for ſome ſuch like thing; **for this is altogether incertain.**

It is ſaid, that this Action will not lye for this,

this, ſaid of a Jaylor, He hath let forth priſoners out of the Gaol, and had his part and ſhares with them; and by that means he came to his goods. He had not a ſheet on his bed before he let them out of the Gaol, to ſteal them. Croo. 1. part laſt publiſht. 783.

Attempt or indeavour of Theft. Sect. 6.

This Action is ſaid to lye alſo for the words in the following Caſes, viz. for ſaying J. S. and W. S. knowing that A. did carry mony, did lye in wait to rob him, and ſet upon him, but he raiſing the Country, they did fly away, and J. S. loſt his horſe, and they both were driven to ride away with one horſe. Croo. 1. 99. In Huttons Rep. 58.

So for this, He ſet upon me to rob me in the high-way, and had done it, had not my horſe the better eſcaped with me. In Bulſtr. 2. part, 206.

So for this, He lay in wait to aſſault J. S. with an intent to rob him. Mich. 4. Jac. B. R. Lanes Rep. 98. Finches Law. 186. **So for this,** He lay in the High-way to rob me. In Lanes Rep. 98. Yelvertons Rep. 90.

So for this, Thou layeſt in wait to rob me. Croo. 1. part laſt publiſht, 888. Paſche. 5. Jac. B. R. 191. of Croo. 1. part laſt publiſht.

So for this, A. is a falſe Knave, and was at my houſe the Seſſions day at night, and would have robbed me, and did break my doors, and put me in jeopardy of my life. In Bulſtr. 3. 200. Dyer 26.

And yet it is ſaid it will not ly for this, Thou haſt ſtoln by the High-way ſide. Goldsb. Rep. 143.

So

So it will lye (as it is ſaid) for this, Thou haſt hired one to rob me. Hill. 13. Jac. B. R. Bulſtr. 3. 167. So for this, Thou haſt been a ſetter of Theeves to rob me; and yet the contrary is affirmed.

And it is ſaid by ſome that this Action will not lye for this, He would have robbed me; Nor for this, Thou haſt hired one to rob me; Nor for this, Thou art a ſetter of Theeves to rob me; Nor for this, Thou keepeſt men to rob me; Nor for this, Thou keepeſt men with intent to rob me; Nor for this, Thou keepeſt men which do rob me, or which have robbed me. Hill 13. Jac. B. R. But ſee the firſt Section of this Chapter, how the Law is in theſe things.

So for this, That nine perſons did ſet upon me to rob me, and J. S. was one of them. Croo. 1. 99. Coo. 4. 16. Eatons Caſe.

An action was brought for this, Bring me to the Conſtables houſe, for I am robbed this night, and bring me to the houſe of A. Bond to Arreſt him, for old Bond doth ſet his Sons to rob me [Innuendo C. and D.] from time to time; In this Caſe it was adjudged that old Bond can have no Action for theſe words, and that an Innuendo cannot aſcertain it. Croo. 1. laſt publiſht 618.

Innuendo.

It is ſaid that this Action will lye for theſe words, A. doth, or will prepare to rob me, Mich. 14. Jac. Sydnham againſt May. But it is ſaid it will not lye for this, Thou wouldſt have taken my Purſe from me on the High-way. Godb. Rep. 202. Nor for this, He had a mind

Inclinarion or purpoſe only, no Act done.

to

to rob me, Bulſt. 2. part 206.

Nor will it lye for ſuch words as theſe, He is a theeviſh fellow, **ſee more of this,** Chap. 7. Sect. 3. **or,** Thou art a Theeviſh Knave; **Or,** He is a theeviſh Rogue; **or,** He is a Roguiſh Knave. **For theſe Adjective words import only an inclination to do ſomething, but nothing done. Nor will it lye for this,** Thou art a theeviſh Whore. Coo. 4. 16, 19. Bulſtr. 1. part 134. 138. Croo. 2. 514. **And yet it will lye for this,** Thou art a cunning thief. Bulſtr. 2. 146. Adjective words.

It is ſaid this Action will lye for this, You are a Thief, for you have ſtoln a buſhel of my Apples on the ground. Bulſtr. 1. part 163. **So,** Thou art a Thief, for thou haſt ſtoln a buſhel of my Apples out of my loft, **or,** [out of my Cock-loft.] **So for this,** Thou haſt ſtoln the Apples out of my loft. Hobb. pl. 253. About ſtealing of Apples. Sect. 7.

But this Action will not lye for theſe words, Thou art a Thief, for thou haſt ſtoln my Apples out of my Orchard. **Nor for this,** Thou art a thief, and that will be proved, by ſtealing my Apples in my Orchard. Bulſtr. 1. part 163. Mich. 43. 44. Eliz. Co. B. Dobbins and Franklin. Coo. 4. 19. **yet ſee the Caſes following for this.**

Nor for this, Thou haſt ſtoln my Apples out of my Orchard. Bulſtr. 1. part 163. **Nor for this,** Thou art a thief, for thou haſt robbed my Orchard, **or,** for thou haſt ſtoln my Apples out of my Orchard. Huttons Rep. 65.

Nor for this (*as ſome judgements are*) Thou art a Theif, and thou haſt Stoln my Apples out my

my Orchard, or from my Trees in my Orchard, Hobb. Rep. pl. 98. 106. 404. **Nor for this,** He is a Thief, and it will be proved by Stealing of my Apples out of my Orchard. Coo. 4. 19. Hobb. Rep. 97. 406. 381. See afterwards.

But other judgments are; that these words are Actionable where the words are coupled together by the word And, **after Theef.** See them after, differing opinions about this, and Bulstr. 2. part 142. Hobb. Rep. 106. Coo. 4. 17.

But it is said it will not lye for this, Thou hast Stoln Apples out of my Orchard, and art a Theef, **for this is the like Case.** Coo. 4. 15. Thou didst kill thy wife, and art a Traytor.

Nor for this, Thou hast robbed my Orchard of my Apples, and wilt be hanged for this. Bulstr. 3. part 267.

About Stealing of Trees, Wood, and Timber.

It is said by some that this Action will lye for these words, Thou art a Thief, and hast Stoln my Trees; Or [And thou hast Stoln my Trees.] Or [And thou hast Stoln Mr. Georges Trees.] Or [And thou hast Stoln my Apple Trees.] Brownl. 2. Cowl and Gilberts Case. Co. B. Hill. 3. Jac. B. R. Minors Case. Or [And thou hast Stoln the Apple Trees out of my Orchard] Croo. 2. 114. 7. Jac. B. R. Hobb. Rep. 77. Brownl. 2. Brown and Gilberts Case. **But there are other judgements, that it will not lye for these words.** Goldsb. and Brownl. 2. Hobb. Rep. 98. 404. Godb. 335. Benloes. 137.

Cro. Eliz. Minors & Leyford. Case.

Differing opinions and judgements about this.

It is agreed by all that it will not lye for these words, Thou art a Thief, for thou hast Stoln my Trees, or Mr. Georges Trees, &c.

Croo.

Croo. 2. 114. Hobb. Rep. pl. 19. 97. 106. 381. 406. 473.

And for the difference between [And] and [For] and the Judgements that are contrary one to another about this. See Hobb. pl. 98. 191. 404. 106. 476. Godb. pl. 335. Bendloes 137. Coot and Gilbert. Co. B. Coo. 4. 19. Hobb. Rep. 406. 381. Winch. Rep. 10. 113. Marſh. 211. 280. Bulſtr. 1. 143. Croo. 2. part 39. 114. Yelverton 10. 34. Croo. 231. Noys Rep. 135. Hobb. Rep. 77. Brownl. 2. Godb. 335.

This Action will lye for this, Thou haſt Stoln two armfulls of my wood. Bulſtr. 2. part 82. and 1. 163.

So for this, Thou art a Thief, and haſt feloniouſly taken my wood. Paſche. 38. Eliz. B. R.

So for this, Thou haſt Feloniouſly Stoln my wood. Croo. 1. part laſt publiſht. 471.

So for this, Thou haſt Stoln my wood. Croo. 2. part 166. 138. Hobb. Rep. pl. 258. Loes Caſe. Bulſtr. 1. part 81. 2. part 81. Stiles Rep. 25.

So for this, Thou haſt Stoln my wood, and I ſhall charge thee with Felony. Paſche. 38. Eliz. Co. B. Stiles 25.

So for this, Thou ſtoln my wood out of my Baxton. Popham. Rep. 129. Brownl. Rep. 2. Coo. 4. 19. Marſh. Rep. pl. 248.

So for this, He hath Stoln a tree formerly cut down, which is Felony, and I will cauſe him to be indicted for it. Croo. 1. 413.

So for this, He is a Thief, and Stole my timber. Huttons Rep. 38. **And yet ſome will not**

not agree to this, but I know not the reasons of their doubt.

So for this, Thou hast stoln as much wood and timber out of thy Landlords ground, as is worth Twenty Pound. Yelvertons Rep. 152.

And yet it is doubted whether it will lye for this, A. did Steal my wood, and I will send him to Bridewel. Because of the last words. Stiles Rep. 25.

But it is said the Action will not lye for this, Thou hast Stoln my Trees [or my Tree] or [a Tree] Stiles Rep. 9. Hobb. Rep. pl. 77. Brownl. 2.

And yet some oppose this, Bulstr. 3. 267. Croo. 2. 136. Bulstr. 2. 81. Howbeit it seems to be clear, that no Action will lye for these words.

Nor will it lye for this, Thou hast Stoln my Wood growing in my Coppice. Nor for this, Thou hast Stoln an Acre of my Wood. Nor for this, He came in my Wood, and cut down ten load, and Stole it away.

It is said to be Actionable to say of one, He hath Stoln a load of hop-poles. Croo. 1. last publisht. 225.

About Corn. This Action will lye also for this, Thou art a Theef, for thou hast Stoln my sheaf of corn. Bulstr. Rep. 1. part 163.

Sect. 8. So for this, Thou art a Theef, for thou Stoln my corn out of my barn. Stiles Rep. 135.

So for this. Thou hast stoln my corn, and made me no satisfaction. Huttons Rep. 64. Wiches. Rep. 6.

So for this, Thou art a Theef, and hast Stoln my

my corn. Croo. 2. 39. 424. Winch. 6. 10. Bulſtr. 1. part 81. Stiles Rep. 24. 73. Yet ſee Huttons Rep. 38. Hobb. Rep. 97. 406. 381. Coo. 4. 19. And yet in ſome of theſe alſo there is ſome Queſtion. Hobb. Rep. 38.

So it will lye for this, Thou haſt Stoln the corn, or [my corn] out of my barn. Hobb. pl. 258. Popham 129. Brownl. Rep. 2. **So for this,** Thou haſt Stoln my corn and carried it to Market, Croo. 2. 422.

So for this, Thou art a falſe knave, and didſt Steal my corn. Harris Caſe. Quere of this.

So for this, Thou art a Corn Stealer. Croo. 1. part laſt publiſht 563. 39. Eliz. Cookes Caſe B. R.

So for this, J. S. hath Stoln ſo many loads, or [ſo many buſhels] of my corn. Owens Rep. 57.

But it is doubted whether it will lye for this, Thou haſt ſtoln as much corn out of my fields as is worth Nine or Ten Shillings. Croo. 2. 457.

Some queſtion alſo is made of this, whether it will lye for ſaying, He hath Stoln my corn, or Stoln away my corn. Trin. 37. Eliz.

It is ſaid, that it will not lye for this, Thou art a Theef, and haſt Stoln my corn in the field. Winch. Rep. 6. Stiles Rep. 66. Croo. 2. 204. **Nor for this,** Thou art a Theef, and Stoleſt the corn out of my field. Winch. Rep. 6. Hobb. Rep. pl. 97. 106. 406. 473. **And yet ſome judgments and reſolutions ſeem to be againſt theſe Caſes. Nor will it lye for this,** Thou art a Theef,

Theef, for thou haſt Stoln half an Acre of my corn, **nor will an** Innuendo **corn ſevered, alter the Caſe, and make the words Actionable.** Croo. 1. part laſt publiſht 428. Owens Rep. 57. Hobb. pl. 97. 106. 406. 473.

Innuendo.

About Furzes. **It is ſaid this Action will lye for this,** Thou haſt Stoln my Furzes out of my Barton. Hobb. Rep. 258. **So for this,** Thou art a Theef, and haſt Stolen my Furze. Popham. 152.

But it will not lye for this, Thou art a Theef, and haſt Stoln Ten Cart load of my Furzes: **unleſs he ſay out of my Yard, for otherwiſe it ſhall be intended Furzes growing,** Huttons Rep. 113. 13. Hobb. Rep. pl. 97. 165. 406. 476.

About Fatches **It is ſaid, it will lye for this,** Thou art a Theef, and haſt Stoln a bundle of Fatches. Huttons Rep. 65.

About Hay and Graſs. **It is ſaid, that it will lye for this,** Thou haſt Stoln Hay from Mr. Bells Racks. Popham. 129. Yet ſee Winch. 6.

So for this, He is a Theef, and hath Stoln my Graſs. Stiles Rep. 231.

About Hops. **It is ſaid it will lye for this,** He is a Theef, and hath Stoln my Hops: **But this is denyed by ſome Judges to be Law.** Huttons Rep. 38. **But it is ſaid that it will not lye for this,** Thou art a Theef, for thou haſt robbed my Hop-ground. Coo. 4. 17 **Nor for this,** Thou art a Theef, and it will be proved by the robbing of my Hop-ground. Coo. 4. 17. 19.

About Turnips. **It is ſaid it will lye for this,** He is a Thief, & hath ſtoln my Turnips. Stiles Rep. 231.

It will not lye for this, Thou art a theeviſh Rogue, and haſt ſtoln barres of Iron out

of

of other mens windows; and yet if he shall say, Thou didst steal bars of Iron out of such a mans house, these words may be more questionable. About bars of Iron out of Windows.

Nor will this Action lye for this, He hath stoln forty pound of Lead from the house of J. S. [or off the house of J. S.] if the words were out of the house of J. S. it may be this may alter the Case. So to say, He hath stoln ten pound of Lead, it seems this is actionable. Brownl. 2. part 84. About Lead from a house.

It is said it will not lye for saying, Hee hath stoln the Tile off my house. So likewise it is said it will not lye for saying, He hath stoln my Tiles. Sed quere of this last Case, yet see Stiles Rep. 231. About the tile off a house.

Now out of all these Cases, about slanderous words, for stealing of Corn, Apples, Wood, Trees, Tile, Lead, and the like; some of which things, as the Tile, Timber, bars of Windows and the like, in a house, the Law doth look upon as parcel of the house. And others, as Trees, Corn, Grass, Turnips, Fatches, and the like, growing upon the ground, Apples, Hops, and the like fruit of Trees, the Law doth look upon as incident to, and parcel of the thing wherein they are, and whereon they grow, until they be severed, and till then no Felony can be committed by the taking of any such thing away; and therefore the Report of the doing of such a thing is not so dangerous; but in many of the Cases it cannot but be observed, there is (at least seemingly) much contradiction, the summe of Sect. 9. Felony.

all being put together, seems to be thus much. That it is agreed on all sides, that if the charge in the words be of such a Theft, as if true, may bring a man in peril of his life, or member of his body, as where it doth charge him with the stealing of any of these things severed from that to which it is annexed, the words will be actionable.

So likewise where the charge is thus, Thou art a Thief [For] Or, [And] thou hast stoln Corn out of my Barn, or the like, that for these, and such like words as these, the words will be actionable.

So likewise where the charge is thus, Thou art a Thief, for thou hast stoln my Apples out of my Orchard, or stoln my Trees off my ground, or the like, the words will not be actionable; for a man cannot be in danger of life, or member, by the taking away of these things, for it is no Felony to cut and take away standing Corn out of the Field, Apples from the Trees in an Orchard, nor to cut and take away standing Trees, Wood, Furzes, and the like; or to take away the Bars or Irons of a Window, Tiles from off the house, and the like, and therefore the charge of taking them away is no charge of Felony, or other great Crime.

Words of qualification.

But where the words of the Slander are thus, Thou art a Thief, and hast stoln my Apples out of my Orchard, or the like, upon this Case the Judges have been divided in their opinions, some of them maintaining that the words subsequent to the actionable words, may

may be qualified by the word [And] as well as by the word [For] others maintaining that the word [For] only, will enure, and work to explain and qualifie, and that when the words are brought in by [And] they are, and shall be cumulative, and an additional slander; as, Thou art a Thief, and hast stoln my Apples out of my Orchard, or the like, that in such Cases the Action shall lye for the word thief alone, and not be taken away by the subsequent words, as in case where the words be, Thou art a Thief, for thou hast stoln my Apples out of my Orchard. But that it shall be alike in both Cases.

Some of the Judges also have put a difference between words of qualification uttered at the same time with other words, and words of qualification, delivered at another time; as where one shall say, J. S. is a Thief, and a slander by say to him, Take heed what you say, and then he say, Is not he a Thief that hath stoln my Apples out of my Orchard? some think in this Case that the words do not qualifie, others think that they have as much force herein as if they had been spoken together at the same time. It behoves men therefore in these Cases, that have need to know the Law, to take good advice herein.

About the receipt, keeping, and concealment of Felons, and goods stoln.

It hath been agreed that this Action will lye for these words, Thou maintainest thieves to steal my goods. Croo. 2. 629. So for this, Thou maintainest Pirates to rob upon the Seas. See Croo. 2. 629. So it is said to be adjudged to lye for this, He is a maintainer of

Felons, albeit hee doth not say, that he knew them to be Felons, or, that he was a Justice of Peace. Sir Henry Leas Case, Cited in Croo. 2. 268.

Charge of a man, as an accessary to a Felony. Sect. 10.

✗ Some Reports have been, of judgements in Cases for these, and such like words as these, Thou receivest thieves, thou keepest thieves, thou keepest thieves about thee, thou keepest thieves in thy house, thou maintainest thieves in thy house. Let me say it with reverence, I cannot receive them as Law, nor sæ reason for them: for such kinds of spæches have not an import of any foul aspersion, they are ambiguous, why and how a man doth receive and keep such men about him, he may by occasion of business, relation, or other obligation, have cause to kæp such men about him, possibly he may not know them to be such; or if he do, it is not against any Law to receive thieves, or stoln goods, unless it be so as to countenance or cover the offence, or keep the offender from punishment; nor is any man bound by the Law to discover any such offendor (except he be a Traitor) but at his pleasure, for a man may doubtless, in many Cases, knowingly receive a thief, or the goods stoln by a thief, and justifie it by the Law; and therefore in 42 Eliz. in the Exchequer Chamber, a Judgement upon a Writ of Error was reversed, in the Case of Ball and Bridges; and it was therein agræd by all the Justices and Barons, That this Action shall not lye for these words, He is a maintainer of thieves, and keepeth none but

Harbour or keep Traitors.

but thieves in his houſe, and I will prove it, &c. **for one may have and maintain thieves in his houſe, and not know them to be ſuch, and this is no offence. But there the Judges did ſeem to agree all of them in this, that if the words be thus,** That he did maintain, and keep ſuch in his houſe, knowing them to be ſuch, **that this would be Actionable.** Croo. 1. laſt publiſht. 746. 888. **and it is reported by** Goldsb. 48. **That in Eaſter Term,** 29 Eliz. Co. B.

It was there agreed by the Judges, that this Action was maintainable for theſe words, Thou doſt maintain traytors, or, thou doſt maintain thieves, See Chap. 6. Sect. 1, 2. **But that no Action will lye for ſaying,** Thou doſt keep thieves. **And that it hath been agreed not to lye for this,** He is a receiver of thieves, Mich. 40. 41 Eliz. Co. B. **Nor for this,** He kept men that did rob upon the High-way. Hobb. Rep. **Nor for this,** Thou keepeſt thieves, without ſaying, or knowing them to be ſuch. Goldsb. pl. 7. **Nor for this,** He hath thieves in his houſe. Croo. 2. 331. **Nor for this,** Thou keepeſt none but thieves [or, Cut-purſes] in thy houſe, and haſt their goods. Mich. 17. Jac. B. R. **Nor for this,** Thou keepeſt men to rob on the High-way. **Nor for this,** Thou keepeſt men that rob me, **for all this may be unawares to him.** Croo. 1. laſt publiſht. 188.

It is ſaid, it will not lye for this, of a man that had loſt cloth, ſtoln by unknown perſons. A. hath received again his pieces of

cloth, and beareth with the thief [Innuendo quendam malefactorem ignotum. Hall versus Hemsy. Trin. 38. Eliz. Noys Rep. 57. **Nor for this**, He hath three parcels of his cloth again of the thief that did steal it from him, and if I receive any hurt henceforth, I will charge him with it. Goldsb. Rep. 119.

Nor for this, A. keepeth men to rob me; **albeit he hath been robbed by his men. But if he say**, He keepeth men to that intent to that intent to rob me, and I was robbed by them; **these words would be dangerous.** Sir Harbert Croft against Brown. Pasche 14. Jac. Bulstr. 3. part 167.

Nor for this, A. and his Servants went about to rob me, and he did maintain them. **But if he say, that he kept them to that intent, and that any thing was done, the words would be dangerous.** Sir John Harpers Case. Bulstr. 3. 167.

This Action will lye for this, Thou hast hoistred Thieves, and stoln goods, and the thieves and goods were found in your house, and the thieves were had before such Justices, and committed by them to prison, and were hanged; and if the Justice had not been your friend, it had been hard with you. Bulstr. 2. part 109.

So for these words, spoken by a servant, whose Master had lost goods, Thou art a maintainer of thieves to steal my Masters goods. Croo. 2. 629.

It will not lye for a Son for these words, A. hath stoln a Horse, and his Son is consenting

ſenting to it. Trin. 14. Jac. Lewkners Caſe.

Nor for this, I was robbed, and A. received x
part of the goods ſtoln, and I could hang him for it. Paſch. 7. Jac. Newlins Caſe.

Nor for this, Thou art a favourer of + thieves. Dyer. 75.

Nor for this, Thou didſt conſent to the ſtealing of my Mare. Croo. 1. laſt publiſht. 780.

Nor for this, Thou art a companion of thieves. Croo. 1. laſt publiſht. 554.

Nor for this, Thou didſt, and doſt receive thief-ſtoln goods, witneſs a Feather-bed tick in thy houſe, and the cloth which thy mans Sute was made of, and thou kneweſt they were ſtoln. Stiles Rep. 91.

Nor for this, Thou art an arrant Knave, + thou haſt bought ſtoln Swine, and a ſtoln Cow, knowing them to be ſtoln. Yelverton. Rep. 5.

Nor for this, You have taken ſtoln goods, knowing them to be ſtoln. Yelverton. 5.

But it is thought it may lye for this, A. ſtole a Mare, and thou B. knowing of the ſame, conveyedſt her into the Fens to my Brother B. his houſe. **And it may lye for A. and B. both.** Goldsb. Rep. 132.

And yet it is ſaid, it will not lye for this. Thy Boy [Innuendo Ambroſe Latham, **the Plaintiffs Wives Son**) hath cut my Purſe, Cut-purſe. and thou haſt received it, knowing it, and haſt the Rings and Mony that were therein in thy hand; therefore I charge thee with Felony. Croo. 1. laſt publiſht. 890. I charge thee with Felony.

Nor will it lye for saying, Thou art a Knave, and hast received stoln goods, and thou knewest they were stoln. For all this, though it be true, is not Felony, unless it be a Receipt to maintain the Felon, and a man may in divers cases receive such goods lawfully. Croo. 1. part. last publisht. 888.

So for this, I was robbed, and you were privie thereunto, and had part of the money. So it is said, it will lye for this, Thou hast been a setter of Thieves to rob me. Hill. 3. Jac. B. R.

Sect. 11. So where there is talk betwæn two of A. and B. and one of them that are talking together, say, A. hath stoln goods away, and B. was privie and consenting thereunto, in this case A. and B. both are slandered, and may have either of them this Action. Mot and his Wife against Butler. Mich. 7. Car. 1. B. R. Croo. 1. 171. So it is said, this Action will lye for this, I was robbed, and A. B. was privie to it and had part of the money. Godb. Rep. 138. pl. 32. 38. Eliz. Redfords Case.

So it is said, it will lye for this, Thou hast houstred [or received] goods that were stoln, knowing them to be stoln. But it seems these words are not actionable, except it be added, Ex scientia; And that the Action will not lye for saying of a man, He received stoln goods, for he may justifie that in some cases. And if the Receipt be such as is not Felony, the Defendant is to set it forth the clearing of himself. Mich. 17. Car. 1. B. R. Haws Case. Croo. 2. 331. Bulstr. 3. 167. Goldsb. pl. 7.

But

FH MVSEVM BRITANNICVM

But it will not lye for this, A. hath received three pieces of his cloth again of the thief, and beareth with the thief; and if I have any hurt hereafter, I will charge him with it. Croo. 1. part laſt publiſht. 487.

So for this, Thou art a concealer of Felons, and haſt ſhewed ſuch favour to a Horſe-ſtealer, that he and the horſe is conveyed away, and it is in my power to hang thee. Rewdam verſus Tooker Paſche. 7. Jac. B. R. Concealment of felons and goods ſtoln.

So for this, if one ſay, A. is a Felon, **and a ſtander by, ſaith, Take heed what you ſay, And then he ſaith,** Why, is not he a Felon, that knew of the ſtealing of a horſe, and did not reveal it till long after, that it was openly known? Yelvertons Rep. 154.

So alſo (as it ſeems) for this only, Thou art a concealer of Felonies. Pendants Caſe. Bulſtr. 1. part 48.

So for this, it is ſaid it will lye, You have bought a Roan ſtoln horſe, knowing him to be ſtoln. Godb. Rep. 212. 157. Briggs Caſe.

And it will lye for theſe words, He is a ſmotherer and maintainer of Felonies, **eſpecially when they be ſpoken of a Magiſtrate.** Croo. 2. 268.

But it will not lye for this, A. hath picked five ſhillings out of the pocket of B. and her husband was conſenting to it. Dromants Caſe. Yelverton. 136. Pick-pocket.

It is ſaid, it will lye for this, A. is a Thief, for he hath ſtoln a Lamb from B. and Geeſe from C. and killed them in my ground. **So for**

for this, He is a thief, for he hath ſtoln a Lamb from A. and killed it in my ground. Hill. 3. Jac. B. R.

So it is thought it may lye for this, Thou haſt taken my mony, and I will carry thee before a Juſtice of Peace, and lay Felony to thy charge, in Godb. Rep. 202.

Averment. It is ſaid, it will lye for this, Hee hath no ſheets in his houſe, but what were ſtoln for him. But not without this Averment, that hee hath ſheets in his houſe. Bulſtr. 1. part 141. Sed Quere of this.

So for this, it will lye, Hee ſtole a Mare, and was in Gaol for it. Hobb. Rep. pl. 196.

Averment. So for this, Thou haſt ſtoln Horſes in London. So for this, thou haſt ſtoln as many horſes, as I have fingers and toes. And in theſe Caſes there needs no Averment, that horſes were ſtoln in London, or how many fingers and toes hee had.

Cut-purſe. So it is ſaid, to lye for this, Hee is a cunning Knave, and acquainted with more cut-purſes, than any man in Northampton-ſhire, and there is not a purſe cut within twenty miles of him, but he hath his part of it. Bulſtr. 1. part 147. 36, 37. Eliz. Buts Caſe. But in this caſe it ſeems there muſt

Averment. be an Averment, that there be cut-purſes there, otherwiſe it will not lye. Popham. Rep. 180. Huttons Rep. 58.

The manner of the words ſpoken. This Action will lye for words ſpoken thus, You are no Thief, are you? ſpoken by way of Irony. Appletons Caſe. B. R. Paſche. 15. Car. 1. Hill. 4. Jack. Lady Morriſons Caſe.

See

See March. Rep. pl. 18. **So for this**, What J. S. that Thief? Nelſons Caſe. Paſche. 15. Jac. B. R. Hardwicks Caſe. 40. Eliz Co. B. Sect. 12. By way of Interrogation.

So for this, I will juſtifie that Barns is a Thief. Trin. 9. Jac. B. R. **So for this**, Have you brought my Horſe you have ſtoln. Maines Caſe. Trin. 9. Jac. B R. By way of Interrogation.

So for this, Haſt thou been at London, to change the money thou didſt ſteal from mee. Croo. 2. 569. **So for this**, Did you not hear that A. B. is guilty of Theft, Coo. 12. 134. By way of Opinion.

So for this, I verily think him to be a Horſe Stealer, **albeit hee ſay not he is one.** In Goldsb. Rep. 186.

So for this, Go follow ſuit againſt Willimote [Innuendo **the Plaintiff**] for ſtealing the two Kine; and hang him, or I will hang thee, for this is as much as to ſay, he ſtole them. Croo. 1. laſt publiſht 904.

So for this, He did better than many an honeſter man did, for there is many an honeſter and truer man hanged. And there was a Robbery committed, whereof I think him to be one; and I verily think him to be a Horſe-ſtealer, **Albeit hee do not ſay**, He was one of the Robbers. Goldsb. Rep. 186. Owens Rep. 18. Wiſdoms Caſe. Opinion.

So for this, Thou Mutton-munger Thief, bring home my ſtoln Hay. In Stiles Rep. 70. Mutton-munger thief.

So for this, Hee is infected of the Robbery lately committed, and doth ſmell of the Robbery. Dyer. 317. 72. Godb. Rep. 91.

So for this, If thou hadſt had thy right, thou

thou hadſt been hanged for breaking of Patches Houſe. Brownl. Rep. 3. Harris Caſe. 2. part 280. **So for this**, If my Lord had done him right, he had been hanged. 43, 44. Eliz. Royal and Vertues. Bulſtr. 3. 360.

So for this, I doubt not, but within two dayes to Arreſt J. S. for ſuſpition of Felony. Coo. 4. 15.

I will prove that thou haſt ſtoln, &c.

It is ſaid this Action will lye for the words in the caſes following, viz. I will prove that J. S. hath ſtoln my Books. **So for this**, I will bring him before a Juſtice of Peace, for I will prove that he hath ſtoln my Books. **And yet it is ſaid the words**, I will bring him before a Juſtice of Peace, alone are not Actionable. Paſch. 15. Car. B. R. See in March. pl. 44.

So for this, I will prove thee a Thief, and a plotter of Thievery, and I will prove it by thine own Son, or I will ſend him to the Devil. Croo. 2. 214.

Acceſſary.

So for this, I will juſtifie that A. B. is acceſſary to the Burglary for which C. D. was hanged. Barns and Hunts Caſe. Trin. 9. Jac. B. R.

I charge thee with Felony, &c.

So for this, Take charge of him, and carry him away, for I lay flat Felony to him. **And again afterwards for this, to the Plaintiff himſelf**, I will make you hold up your hand the Bar. Stiles Rep. 235. Yet ſee Croo. 1. part Laſt publiſht 889.

Thou waſt in Gaol for ſtealing, &c.

So for this, A. was in Gaol for ſtealing of the Beaſts of B. **But it is ſaid, it will not lye for theſe words**, A. was in the Gaol for ſuſpition of the ſtealing of the Beaſts of B. Goldsb. Rep. 130.

130. Humfrey Parloes Caſe. Yet ſee Bulſtr. 1 part 40. **It was the opinion of moſt of the Judges, that it will lye for this**, Thou wert in the Gaol for Robbing ſuch a one in the High-way. **And it was ſaid to be adjudged for this**, Thou wert in the Gaol for ſtealing of a Pan. **And yet**, See Hobb. Rep. pl. 196. **It is ſaid to be adjudged not to lye for this**, He is in Warwick Goal, for ſtealing of a Mare and other Beaſts. Hobb. Rep. 235. pl. 196.

So for this, A. was indicted for the ſtealing of a Horſe at a Seſſions holden, &c. **So for this**, Thou waſt arraigned at Warwick Aſſizes for ſtealing of a Horſe, and didſt make good friends, or elſe thou hadſt been hanged. **So for this**, He was arraigned for the ſtealing of twelve Hogs, and had he not made good friends, it had gone hard with him. **So for this**, A. was indicted and convicted for the ſtealing of a Horſe, &c. **But in theſe caſes it ſeems the Plaintiff muſt, or it will be ſafe for him to averr in his Action, that, it is not true which is ſaid, that he was indicted, &c. for if it be true, the words be not actionable. But in this Caſe let the Defendant ſee to it, he do not plead Not guilty, but juſtifie the ſpeaking, and the truth of them.** Croo. 2. 90. Hobb. Rep. 309. Croo. 1. 195. Bulſtrode. 1. part 40. **And yet it is ſaid to be agreed, not to lye for this**, Thou art a falſe Knave, and waſt arraigned for two Bullocks. **Nor for this**, Thou waſt arraigned for ſtealing of two Bullocks. Croo. 1. part laſt publiſht. 279. See Brownl. 2. part 272. Huttons Rep. 2. Some

Thou waſt indicted, &c. for ſtealing, &c.

Averment.

oppo-

oppoſitions are againſt ſome of theſe Caſes. Hobb. pl. 289. 296.

Some Caſes there are that ſay, that this Action will not lye for ſaying, That A. was indicted at ſuch a Seſſions for ſtealing a Horſe. **Nor for this,** Hee was impeached [or accuſed] for ſtealing of a Horſe. **Nor for this,** Hee was arreſted, impriſoned, [or in a Gaol] or arraigned, or did hold up his hand at the Bar, for ſtealing of a Horſe. Hobb. Rep. pl. 289. 296. Goldsb. 30. Bulſtr. 1. part 41. 34. Eliz. Baylyes Caſe. Co. B.

But in all theſe and ſuch like Caſes, if the thing be true that is ſaid, no Action will lye. But the Defendant muſt not plead Not guilty, but juſtifie the words, or demur to the Declaration, whether the words be actionable, or not, as his Caſe is.

Averment. **So for this,** Whoſoever is the falſeſt thief, and ſtrongeſt in the County of Salop, whatſoever he hath ſtoln, or done, A. is falſer than he. **But then it muſt be averred, that there is ſome thief or other in the County of** Salop, **for if it may not appear there is a Felon there, the words are not actionable.** Paſch. 1. Jac. B. R. Haſelwood and Garrets Caſe. **And yet it is ſaid by ſome, that it will not lye for this,** I can find in the Pariſh a falſer Knave than B. who was indicted for Felony; And this Knave is J. S. In Haſelwoods Caſe.

Averment. **So for this,** Thou art as very a Thief as any in Warwick Gaol, **with an Averment, that there is one there.** Bulſtr. 1. part 40. Yelverton. 90. Popham. 180.

So

So it is ſaid, it will lye for words thus ſpoken, Thou art a Thief, and a ſlander by ſaith, Take heed what you ſay, and then hee ſaith, I will juſtifie he is a Thief, for he ſtole away my Evidences. But had they been ſpoken together, uno halitu, it had been otherwiſe. But here it ſhall be taken for an evaſion, and ſo a double ſlander; and the laſt words ſhall increaſe the damages. Yelvertons Rep. 154, 155. Words of qualification. ✕

It is ſaid that words ſlanderous about this matter of theft, will be actionable, though they be uttered after this manner. A. ſaith that B. is a thief; Or A. told me that B. is a thief; Or a woman told me that B. is a thief; Or I have heard A. ſay, that B. is a Thief; Or I have heard it ſaid that B. is a thief; Or B. is a thief, if the report of A. be true; Or I have heard it ſpoken, that B. was one of them, that was at the Robbery of A. and that four of the thieves went to his houſe the next morning. By way of Report. ✕

But in all theſe and ſuch like caſes, the Plaintiff in his Declaration muſt aver, that the party mentioned did never ſay, or report any ſuch thing; for if it be true, hee ſaid it indeed, the Defendant may juſtifie the ſpeaking of them. And if he report it is ſaid by another, and can find no Author but himſelf, the Action will lye upon him. Croo. 2. 406. Goldsb. 139. pl. 5. See in March. Rep. 8. Croo. 2. 350. Coo. 12. 134. Read againſt Saul. 40. 41. Eliz. Co. B. Averment. ✝

So it is ſaid, it will lye for this, where Sect. 13.

one

one man doth charge another with Felony, and the Conſtable being preſent, he ſaith to him, I charge you to arreſt him for Felony. Croo. 1. 201. Stiles Rep. 235. So for this ſaid to a Conſtable, Take charge of him, and carry him away, for I do lay flat Felony to him, I will make him to hold up his hand at the Bar. And ſo for this, There he is, take him, for I charge him with flat Felony; and then for ſaying further, He hath taken my Sheep with a felonious intent. Croo. 1. 201. Mich. 23. Car. 1. B. R. Nevils Caſe. Stiles Rep. 60. 235. And ſo for this, I do charge thee with the ſtealing of my horſe. Croo. 2. 312.

So it is ſaid, it will lye for this, I have ſerved thee with the Queens Letter, for ſtealing goods out of my houſe. Croo. 1. laſt publiſht. 234.

I fear, or I doubt, you are a thief, &c.

But it is ſaid, it will not lye for this, I fear you will be charged for theft. Nor for this, I doubt you will be charged for theft. Nor for this, I fear [or I doubt] A. is a Thief. Nor for this, I fear [or I doubt] you will be arreſted for Felony. Hobb. Rep. 381. 286. 350. Croo. 1. 195. Nor for this, I have Articles againſt you for theft [or for Felony, &c.] Nor for this, J. S. hath found Felony in A. B. and can prove it. Hobb. pl. 3. 395.

Nor (as it is ſaid) will it lye for this, A. was charged with a Felony, for ſtealing, &c. Croo. 1. 195. Hobb. Rep. 381.

Nor for this, to go to a Juſtice of Peace for a Warrant againſt A. and there to ſay to the Juſtice,

Juſtice, I will charge A. with flat Felony for ſtealing my Hops from my ſhop. Ram. and Lumleys Caſe. Huttons Rep. 113.

This Action it is ſaid will lye for theſe words, I verily think J. S. to be a Horſe-ſtealer. Goldsb. 186. Words uttered by way of opinion, or perſwaſion.

So for this, I dreamed this night that J. S. did ſteal a Horſe. See in March. 58. By way of † dream.

So for this, I can prove you a thief, and two men will juſtifie it. Paſch. 5. Jac. B. R. By way of threat.

It is ſaid, it will not lye for theſe words, I can find in this Pariſh a falſer Knave than Briſco is, the which Briſco is indicted of Felony, and Burglary, and is gone to Stafford Gaol. And that falſe Knave is A. B. Haſelwood againſt Briſco. Paſche. 1. Jack. B. R.

And finally it is agreed, that to call a man Thief, **only; will bear an Action, unleſs the word be coupled with ſome other words of qualification, to prove the thing to be no Felony, whereof the ſpeech was intended.** Croo. 1. part laſt publiſht. 857. Sect. 14. †

But this may be qualified by the precedent or ſubſequent words; and therefore it is held, that no Action will lye for calling of one Thief, **in the Caſes hereafter following,** that is to ſay, Thou art a Thief, and haſt ſtoln my Maiden-head. Brownl. 2. **Nor for this,** Thou haſt robbed me, and taken away my Evidences, and a Subpena. Godb. Rep. 89. **Nor for this,** Thou art a Thief, for thou haſt couzened my Couzen Baldwin of his Land. Huttons Rep. 113. Herbert againſt Angel. Mich. 8. Car. 1. **Nor for this,** Thou haſt ſtoln the Lead from Words of qualification.

off my houſe, for which thou ſhalt be hanged. Bulſtr. 3. part 265. **Nor for this**, Thou art a Thief, for thou haſt ſtoln the Tiles off my houſe. Bulſtr. 3. part 265. **Nor for this**, Thou art a Thief, for thou tookeſt away my Cattel upon an Execution, and I will hang thee. Mich. 7 Jac. Wilks Caſe. **And the greater part of the Judges ſeem to be of this opinion, That the words of qualification and explication may be brought in as well by the word And]** as by the word For] See for this. Bulſtr. 2. part 141. Croo. 2. 39. 114. Hobb. Rep. 98. 106. 404. 476. Godb. Rep. 335. Bendloes Rep. 137. Bulſtr. 1. part 143. Yelverton Rep. 24. Winch. Rep. 113. Brownl. 2. part 3.

And. For.

It is ſaid, that this Action will lye for this, Thou art a Thief, for thou haſt ſtoln my Dung. Stiles Rep. 68.

Dung.

And here we muſt add to all the Caſes before, but of Slanders about matter of Theft, theſe following Rules.

1 That in many of the Caſes, of words not actionable in themſelves, if by the ſpeaking of them, any ſpecial damage come to him of whom they are ſpoken by them, there the words may be actionable. Croo. 2. 202.

2 That for all the words herein before mentioned to be actionable in themſelves, and ſuch like, the Action will lye without any Averment of ſpecial damage by them, to the party of whom they are ſpoken. Croo. 1. 101. March. Rep. pl. 2. 93.

Averment.

3 That theſe words in this Chapter being ſuch as bring a man in danger of his life, they that

that bring Actions upon them, or any such words, they must take care of these things.

1 The words (in the Action brought) must be laid to be spoken by the Defendant.

2 They must be laid to be spoken of the Plaintiff.

3 There must be a certainty in the description of the persons of the Plaintiff and Defendant.

4 All slanderous words of this nature must be (as other slanderous words are) under the rest of the general Rules for the Government of all sort of Actions of the Case for words; malicious, false, certain, &c. For if the words be true, or not true, but no malice appearing in them, too general, of a double intendment, or a doubtful meaning, or not sufficiently positive, or altogether incertain, either as to the persons, or to the thing it self, or under a qualification by the precedent or subsequent words, or import an intent only of doing something, but nothing is done; no Action may lye upon them.

And so we have done with Actions of the Case, for words of Slander, that bring a man in danger of his life, And in the next place shall come to Actions for such words as do not bring a man in any danger of his life, but of the loss of a Member, or some other corporal, or pecuniary punishment.

CHAP. XI.

Of words of Slander that may bring a man in danger, of other corporal punishment besides death.

Of Petit Larceny.

Sect. 1. Petit Larceny what.

THere are some words that do not bring a man in danger of his life, but they do, or may bring him in danger of the loss of his Liberty, or of some other corporal punishment, such as are Petit Larceny, Perjury, Forgery, Incontinency, and the like. And for this, these things are to be known.

That Petit Larceny is the stealing of a thing under the value of twelve pence, or not above twelve pence. And the punishment appointed by the Law for this offence, is the loss of all a mans goods whatsoever, and also to be whipped, stocked, bound to the good behaviour, or imprisoned at the discretion of the Judge. If any therefore shall slanderously charge another with this Crime, or any thing like to it, he may have this Action for his remedy. Therefore this Action will lye for these words, J. S. hath stoln six pence, or J. S. hath stoln a Hen, or a Hen and two Cocks, or any goods whatsoever under the value of twelve pence. Hob.Rep.pl.258. 27.H.8.22.Brownl.p.2.

And the Actions of this nature will be maintainable, without Averment of any special damage by the words. But they are to be subject to the general Rules of Actions of the Case for other slanderous words.

CHAP.

CHAP. XII.

Of Perjury.

PErjury is a great Offence, and the punishment thereof great, for he that is convict thereof within the Statute, is to forfeit twenty pound, to have six months imprisonment, his testimony is to be invalid; and if he cannot pay the twenty pound, he is to be put in the Pillory, and his ears to be nailed. 5. Eliz. cap. 5. What it is. Sect. 1.

Therefore it is said, this Action will lye for the speaking of these words, Thou art perjured. Coo. 4. 15. 19. Broo. Action of the Case. 104. He is perjured.

So for this, Thou art a perjured man. 25. Eliz. B. R.

So for this, Thou art a false perjured Knave; or the like. Broo. Action of the Case. 104.

So for this, Thou wast perjured. Mich. 25. Eliz. B. R. Owens Rep. 62. Croo. 1. 144. 234. Kitch. 173.

So this Action will lye for saying, J. S. is [or was] forsworn in such a Court before a Judge of Record. So it do appear to be intended in a judicial proceeding in that Court. Coo. 4. 15. 19. Noys Rep. 34. Croo. 1. 307. But it will not lye for saying, Thou art a false man. Nor for this, Thou art forsworn, or thou art a forsworn fellow. Croo. 1. part last publisht. 572. Owens Rep. 62. He is false forsworn.

Croo. 1. 144. Coo. 4. 15. 19. **Nor for this**, Thou art a falſe forſworn Knave. Croo. 1. part laſt publiſht. 429. Coo. 4. 15. March of Slanders. 2. 13.

It will lye for this, I will prove J. S. to be a perjured Knave. Croo. 1. laſt publiſht. Croo. 1. 209. Croo. 1. laſt publiſht. 374. 500. **Nor for this**, Thou haſt taken a falſe Oath. **Nor for this**, Thou haſt forſworn thy ſelf. Coo. 4. 15. Noys Rep. 3. 222. **Or thus**, I will prove him to be a perjured Knave; or I will bear his charges. Croo. 1. part laſt publiſht. 429.

It is ſaid, it will lye for this, Thou haſt taken a falſe Oath at the Aſſizes, and art falſe forſworn. Stiles Rep. 452.

So for this, He hath forſworn himſelf in the Common Pleas. Huttons Rep. 44. **So for this**, Thou waſt forſworn at the Common Pleas Bar.

So for this, He is forſworn and perjured in ſwearing at the Common Pleas Bar; upon the deeds which he had in his hand. Hill. 34. Eliz. B. R. Crews Caſe. Owens Rep. 13. **So for this**, thou haſt taken a falſe Oath, or thou haſt forſworn thy ſelf in the Kings Bench Court. Noys Rep. 34. Croo. 1. 307.

So for this, Thou haſt forſworn, and I can prove thee forſworn when I will. Bulſtr. 1. part 40.

So for this, Thou art forſworn in a Court of Record, and that I will prove. Croo. 367. **So for this**, He hath forſworn himſelf in a Court Baron. Huttons Rep. 44. March. 1. part 56. **So for this**, He is a perjured old Knave

in

in the Court of J. S. Paſche. 40. Eliz. Co. B. Hutchman and Southcots Caſe. So he hath forſworn himſelf in the Court of A. Coo. 4. 19. 15. **Or in the Court Leet, or in the Court Baron of** A. Noys Rep. 3. Hobb. Rep. 114. pl. 107.

Sect. 2. **It is agreed, to be out of queſtion; that the Action will lye for theſe words**, A. was forſworn, in ſuch, or ſuch a Court, as in the Common Pleas, in Hereford Aſſizes, in the Quarter Seſſions of G. or in the Leet of J. S. **But ſome doubt of this, if the words be**, that A. was forſworn at ſuch a Court, **for this may be in ordinary diſcourſe, and extra-judicially; but others take the Law to be alike in both.** For both theſe Opinions, ſee 38, 39. Eliz. B. R. Willis Caſe, 38, 39. Eliz. Cockins Caſe.

It is ſaid it will lye for this, He hath forſworn himſelf, and Ile teach him the price of an Oath, for I will have his ears cropt. Hetleys Rep. 63.

So for this, He is falſly forſworn before the Juſtices of Aſſize, between A. and B. Hetleys Rep. 188.

So for this, Thou art a falſe forſworn Knave, and art indicted by twelve men for Perjury, and thou haſt compounded for the ſame. Bendloes Rep. 155. Bulſtr. 3. part 304.

So for this, That Perjured Knave J. S. ſtands perjured upon Record, at Guild-Hall London, and I will prove it. Bulſtr. 3. part 283.

So for this, Thou art a Perjured Knave, and

ſtandſt Perjured upon Record for denying of thine own Hand, and I will prove it. Bulſtr. 3. 283.

So for this, Thou haſt forſworn thy ſelf at London, and there it appeareth upon Record. Croo. 1. part laſt publiſht 583.

So for this, Thou wert forſworn, and I can prove thee forſworn when I will. Bulſtr. 1. part 40.

So for this, He is perjured, and I will prove him ſo by two Witneſſes, **without ſaying, in what Court he is perjured.** Noys Rep. 61. Owens Rep. 62. **So for this**, I will prove thee [or I can prove thee] perjured. M. 7. Jac. B. R. Roberts Caſe. **So for this**, I will prove thee a perjured Knave, Yelvertons Rep. 160.

So for this, He is a proper Witneſs, he will ſwear any thing; he hath already forſworn himſelf in the Chancery, and was committed for it by the Lord Keeper. Goldsb. Rep. 444.

So for this, ſaid to a Witneſs, preſently after he comes out of a Court of Record, wherein he was ſworn in a cauſe, He hath forſworn himſelf: **And yet if it be in a Cauſe, wherein the ſpeaker of the words is a party; it may not be actionable.** Hughes Rep. 42. March. 20. See Chap. 2. Sect. 9. Godb. Rep. 445.

It will lye for this, Thou Perjured Beaſt. 18. Jac. B. R. Benſons Caſe. **So for this**, Thou Perjured Beaſt, I will make thee to ſtand upon a Scaffold in the Star-Chamber. Croo. 2. 613.

So for this, ſpoken of one that is to be a Witneſs before a Juſtice of Peace; Thou haſt

haſt been a contentious man this thirty years, and a breeder of ſtrife, and haſt taken a falſe Oath againſt my Brother and Siſter, in a matter of innocency, and haſt taken twenty ſhillings for it, and I will ſhew it upon Record. Stiles Rep. 335.

So for this, when the Star-Chamber was, Thou waſt perjured in the Star-Chamber. **So for this,** Thou waſt committed for Perjury in the Star-Chamber. Coo. 4. 19. Hobb. Rep. pl. 107.

So for this, Thou haſt forſworn thy ſelf, or [thou haſt taken a falſe Oath] in the Leet of J.S. Harriſons Caſe Caſe B. R. Noys Rep. 34.

So for this, Thou waſt forſworn, or [thou tookeſt a falſe Oath] in the Biſhops Court at Exceter. Hobb. Rep. 346. or in the Court of the Conſiſtory of the Biſhop of Exceter. Leonards Rep. 131. **So for this,** Thou waſt forſworn, [or thou tookeſt a falſe Oath] in the Quarter Seſſions at Gloceſter. 38. Eliz. Carlemains Caſe. Coo. 4. 15. Hobb. Rep. 346. 360.

So for this, Thou art a forſworn fellow, for by thy falſe Oath thou haſt hanged as true a man as thy ſelf. 39. Eliz. Brooks Caſe. Croo. 1. part laſt publiſht 572. **So for this,** He is a forſworn man, and hath taken a falſe Oath in his depoſition at T. where he waged his Law againſt me. Croo. 2. part 204.

So for this, ſpoken of a man that had preferred Articles againſt a man to a Juſtice of Peace, to have the good Behaviour againſt him, and taken his Oath to them, He made a falſe Oath before the Juſtice of Peace, and Sect. 3.

I have that in my houſe can prove it. Croo. 1. 275.

So for this, He was forſworn before the Biſhop of S. upon examination by him, by vertue of a Commiſſion out of the Chancery. **But it is ſaid, it will not lye for this**, He was forſworn before the Biſhop of S. Noys Rep. 3.

So for this, Thou art a Perjured perſon, and thou waſt forſworn in the Court of Requeſts, and I will make thee to ſtand upon the Stage for it. Croo. 1. part laſt publiſht 135. Leonard. Rep. 13. Foſter and Thorns Caſe. Or thou haſt forſworn thy ſelf in the Court of Requeſts. Huttons Rep. 34.

So for this, Thou art a forſworn Knave, and I will prove thee to be forſworn in the Spiritual Court. Croo. 1. part laſt publiſht. 609.

So for this, ſpoken of one that had taken his Oath before a Judge upon Articles in the Kings Bench, He made a falſe Oath before the Judge, and I have that in my houſe to prove it. Croo. 1. part 275.

It is ſaid it will lye for this, Thou art a forſworn man in Weſtminſter-Hall. Sed Quere of this. **So for this**, J. S. hath forſworn himſelf, and I will prove him Perjured, or elſe I will bear his charges. Croo. 1. part laſt publiſht 429. **So (as it ſeems) for this**, He was Perjured, and will ſwear one matter to day, and another matter to morrow. Bendloes Rep. 304.

Mainſworn. **This Action will lye in the North Countries, where the word Mainſworn is uſed and known, for ſuch words as theſe**; Thou art Mainſworn, or thou art a mainſworn man;

you

you are a mainſworn lad, he is a mainſworn and forſworn fellow, or the like. **But then they muſt be ſpoken in the hearing of ſome body that doth underſtand them**; but it need not (as it ſeems) be averred, that it was ſpoken in the hearing of ſuch a one, nor that the meaning of the word is forſworn, &c. **But it is the ſafeſt way for the Plaintiff in his Declaration, to aver the ſenſe of the words in that Countrey.** Brownl. Rep. 4. Hobb. Rep. 8. Brownl. Rep. 1. part. 9, 10, 14, 15. Averment.

So it will lye for this, He hath forſworn himſelf before the Councel of the Marches of Wales, in the Suit I had againſt him there for Perjury, and I will ſue him for Perjury. Hobb. Rep. pl. 283. 560. Brownl. 2. part 272.

So for this, Thou art a forſworn Jack in the Court of A. Thou didſt ſwear away twenty ſhillings from B. **if he Aver that the Court of A. is a Court Baron.** Croo. 1. part laſt publiſht 348.

So it will lye for this, He was Perjured in the Kings Bench Court. **Albeit he were never ſworn there.** Coo. 1. part laſt publiſht 569. **But it will not lye for ſaying**, He was forſworn in the Kings Bench, **for this is doubtful whether to be taken, of the Court, or of the Priſon called the** Kings Bench. 41, 42. Eliz. B. R. x

This will lye for a Charge of Perjury, upon a voier dire, as well as upon an Iſſue, for this is puniſhable by the Common Law. Mich. 7. Car. 1. Lawdries Caſe.

But

But this Action will not lye for this, He is a proper Witneſs, he will ſwear any thing. **Nor for this**, He is a falſe man. **But it will lye for ſaying**, He is a falſe perjured man. Godb. Rep. 88. 89.

Nor for this, Thou art a forſworn Knave, and that I will prove, for thou waſt forſworn in the Hundred Court. Innuendo Staverton Hundred Court. Croo. 1. part laſt publiſht. 209.

Nor for this, A. hath but one Mannor, and he hath gotten it by ſwearing, and forſwearing. Coo. 4. 15.

Nor for ſaying this to a man newly ſworn in a Court, You are forſworn, without more words, **as ſaying, in the teſtimony** you have given, or Oath you have taken, **or the like.** Mich. 7. Jac. B. R. Cawdries caſe.

Nor for this (**as it ſeems**) Thou wert detected of Perjury in the Star-Chamber. Croo. 1. part laſt publiſht. 371.

General words and incertain. Sect. 4.

It is ſaid it will not lye for this, Thou art a falſe forſworn Knave, and that I will prove, for thou haſt forſworn thy ſelf againſt A. B. in the Hundred Court. **Becauſe it doth not appear by the words that it was in any Suit wherein he was a Witneſs.** Yelvertons Rep. 27. Croo. 1. 209. **and yet this ſeems to be contrary to ſome of the foregoing Caſes, where it is ſaid to be adjudged to lye for ſaying**, A man was forſworn in a Court Baron. Huttons Rep. 44.

It is ſaid that it wil not lye for this, Thou art a forſworn knave, and was forſworn at H. Court.

Nor

Nor for this, (as it is ſaid) Thou art a falſe forſworn Knave, and didſt take a falſe Oath againſt me at a Commiſſion at E. [Innuendo, out of the High Commiſſion, for an Innuendo may not enlarge the ſenſe of the words. Huttons Rep. 44. Innuendo.

Nor for this, King is a falſe forſworn Knave, and took a falſe Oath againſt me at a Commiſſion at Witham, becauſe it did not appear whence the Commiſſion came. Noys Rep. 2.

Nor for this ſaid of the Side-man of a Pariſh, Thou haſt moſt perjuredly preſented me at the Viſitation, before J. S. Official. Yelvertons Rep. 72. Croo. 2. 80. 120.

Nor for this, Thou wert forſworn in Canterbury Court, for no Court is ſo called. Huttons Rep. 34.

Nor for this, Thou wert forſworn in Whit-Church Court. Croo. 1. laſt publiſht. 609. **Nor for this,** Thou art a forſworn man, thou wert forſworn in Whit-Church Court. Croo. 1. 275.

Nor for this, Thou art perjured, for thou art forſworn in the Biſhop of Gloceſter his Court. Croo. 2. 436. **and yet in** Croo. 2. 185. **it is held to lye for ſaying of a woman,** Thou haſt taken a falſe Oath in the Conſiſtory Court of Exceter.

This Action will not lye for theſe words, Old Apthorp is a perjured Knave, for he did ſwear that ſuch wood was worth forty ſhillings, whereas it was dear of a mark. Bulſtr. 3. part. 150. General and incertain words.

Nor

Nor for this, A. is a perjured old Knave, and that is to be proved by a ſtake parting the Land of A. and B. Coo. 4. 19.

Incertainty. **Nor for this**, I marvel you would marry your Daughter to ſuch a forſworn man. Bulſtr. 1. 150.

× **Nor for this**, I know who ſpoke thoſe words, Winitte and Bell, perjured Raſcals, I mean to have their ears cut, and their tongues cut out, for here being no Chriſtian name, Non conſtat de perſona. Bendlows Rep. 134. **Nor for this**, Thou art forſworn, and haſt taken a falſe Oath at Hereford Aſſizes, **for this might be out of a Court in an ordinary ſpeech. But if the words be**, He took a falſe Oath in Hereford Aſſizes, **it were more dangerous.** Paſch. 15. Car. B. R. **or it be averred to be in a Cauſe there, then the Action will be maintainable.** Cro. 1. 209. March. Rep. pl. 17.

Nor will it lye for this, He is detected for Perjury in the Star Chamber. Coo. 4. 16.

× **Nor for this**, Thou haſt got thy living by ſwearing and forſwearing. Mich. 9. Jac. B. R.

Some have ſaid that it would have lain for this, He hath delivered an untruth in a material thing in the Star-Chamber. Croo. 1. part laſt publiſht. 583. **And yet it is agreed not to lye for this**, He hath delivered an untruth in his Anſwer in the Chancery. 38, 39. Eliz. Browns Caſe. Croo. 1. part laſt publiſht. 375. 500. **Yet it was ſaid to be agreed to lye for this**, He is forſworn in his Anſwer to Chriſtmers Bill in the Chancery. Croo. 1. 234. Noys Rep. 36.

It hath been held to lye for this, Thou art thrice perjured in thy Anſwer in Chancery to my Bill. [Innuendo ſuch a Bill, &c.] Croo. 1. laſt publiſht. 907.

This generally is the Rule for theſe Actions of the Caſe for this kind of Slander, That they muſt import a charge of a Perjury, in ſome judicial Court, and in an Oath taken in the Court, and in ſuch a Court that hath Conuſance of the cauſe wherein it is taken, and judicially taken there in the cauſe, and in a thing material and pertinent, otherwiſe the Perjury is not puniſhable as Perjury; for every untruth, in an Anſwer or Evidence, is not puniſhable; and therefore any charge of a Perjury, in any Caſe wherein it is not puniſhable, is not Actionable; nor will an Innuendo make a ſupply, or alter the Caſe where the words are defective, as Innuendo a judicial Court, &c. Huttons Rep. 44. Sect. 5. ✗ Innuendo.

It is ſaid it will not lye for this, He hath forſworn himſelf at the Bar. Huttons Rep. 44. ✗ Nor for this, Thou art forſworn in Collet Court, not ſhewing what this Court is, and in what Action it was. Croo. 2. 190.

Nor for this, The Plaintiff hath forſworn himſelf, Innuendo before the Juſtices of Aſſize, for the words not actionable, the Innuendo cannot make them actionable. Croo. 1. part laſt publiſht. 609. ✗

If one call another Whore, and ſhe Sue in the Spiritual Court for this defamation, and the Defendant brings in Witneſſes to prove it, and to diſparage the Witneſs, ſhe put

[illegible] an exception into the Court, That he had been perjured, this was admitted lawful, Trin. 15. Jac. B. R. Westovers Case against Davenet.

If a Cause be depending between Plaintiff and Defendant, and the Defendant upon the reading of an Affidavit of the Plaintiffs made in Court, said openly in the Court, There is not a word true in the Affidavit, which I will prove by forty Witnesses; in this Case the Action will not lye for the words, for it is in the defence of his title, Pasche 51. Car. B.R. Mutton against Clapham; nor for saying to one that hath newly given evidence against him in any Court, Thou art much forsworn as God is true. Goldsb. and Brownl. 7. March. Rep. pl. 45. Molton against Clapham.

For suborning and procuring of Perjury.

It is said that it will lye for this, Thou art not so honest a man as thou takest thy self, for thou hast drawn J. S. into Perjury. Croo. 1. part last publisht. 899. 906.

So for this, He is a suborner of Perjury. Croo. 1. part last publisht. 308. So for this, Thou art a procurer of Perjury. 25. Eliz. B. R.

So for this, You have Caused J. S. to perjure himself. Brownl. 1. part 2. and 2. 49.

So for this, Thou didst suborn, procure, and bring in false Witnesses in such a Court in Westminster, &c. Leonards Rep. 101.

So for this, Thou hast procured eight or ten of thy Neighbours to perjure themselves Mich. 4. Jac. B. R. Fenner and Muttons Case.

So for this, Thou hast procured [or suborned]

ed] one Smith to come thirty miles to commit perjury, before my Lord of Winchester, and hast given him ten pound for that purpose. Croo. 2. part 158. Croo. 1. part 244. And yet if the words had such an import that he did not take the Oath when he came, it may be otherwise. Croo. 2. part 158.

So for this, Thou hast given A. ten pound for forswearing himself in Chancery, and thou hast hired him to forge a Deed. Croo. 2. part 244, 245.

Parson Prits Case in Suffolk was this, in Master Foxes Book there is a relation of one Greenwood of Suffolk, who is there reported to have perjured himself before the Bishop of Norwich, in giving of evidence against a Martyr, and that after by Gods Judgement upon him, his bowels rotted away, and all this was false. And the Parson not knowing the truth of it, preached against Perjury, and cited this story of Gods Judgement upon Greenwood, who brought his Action for this slander, but it was adjudged against him, because it was not brought malitiose.

This Action for such like words as these, about matter of Perjury, is to be subject to the general Rules annexed to the rest of the Cases at the end of other Chapters, that the words are actionable, without Averment of any special loss by them, so as they be false, malicious, direct, certain, &c. See for this. Croo. 1. last publisht. 169.

CHAP. XIII.

Of Forgery.

Sect. 1. FOrgery is also a great offence, and the punishment thereof great, by the Statute of 5. Eliz. chap. 14. For the offender may for this be put in the Pillory, have one of his ears cut off, and be imprisoned for a year. If any one therefore shall charge another with this Crime, or any thing like unto it, the party wronged by it, may have his remedy by this Action.

Of a Deed. It is therefore agreed, that this Action will lye for saying of another, Thou hast forged a Deed. Owens Rep. 47.

That he hath forged a Lease, Obligation, Release, Acquittance, Feoffment, or other Deed. Croo. 1. part last publisht. 554 607. Owens Rep. 47.

So for this, Thou art a forger of false Deeds.

So for this, Thou art a forger of false Writings.

So for this, Thou art a forger of Writings. Dyer. 285. Pasche. 39. Eliz. B. R. Wades Case. 39. Eliz. B. R. Goodalls Case. Croo. 1. last publisht. 553.

Adiective words. But it will not lye for saying, One is a forging Knave. Goldsb. 25. pl. 5. Nor for this, Thou art a Knave of Recod, and a forging Knave. Popham. Rep. 177. But it will lye for this, A. hath procured such a Deed (Innuendo, such

such a Deed given in evidence) to be forged.

So for this, He falsly procured such a deed to be forged. Hetleys Rep. 31.

So for this, This is a forged Deed, and you know it to be forged. So for this, You made this Deed under a hedge, and forged it. Owens Rep. 47.

So for this, Thou hast forged the will of J.S. Pasche. 7. Car. 1. B. R. Mackenists Case.

So (by one Judge) for this, thou hast forged my Fathers will. Popham. 177. But in Winch. Rep. 40. It is said to be adjudged not to lye for this, Mallard is a Knave, and forged my Husbands will against his mind. 10. Jac. for then it was not her Husbands will, if it were forged. ✗

So for this, The Deed which Sir George Reynel shewed forth to Sir John Tindal was forged, and made under a hedge. Bulst. 2. part 132. 133.

So for this, Thou hast hired A. to forge a Deed [or to forge a Bond.] Croo. 1. part 244, 245.

So for this, He hath forged an Obligation, and I will prove it. Croo. 1. last publisht. 603.

This Action (it is said) will lye for this, Thou hast forged my Fathers hand, whereby thou hast received my Rent. Bulstr. 3. 265.

But this Action will not lye for words thus uttered, I have matter enough against J. S. for Mr. Harley hath found Forgery, and can prove it against him, Hobb. Rep. 3. 467. pl. 395. 382.

Nor for this, I have found Forgery against thee, and can prove it. Huttons Rep. 39.

Of a Record. Sect. 2.

This Action (it is said) will lye for this, Thou hast forged a Record in Abergaveni Court. Mich. 7. Car. 1. B. R. for this is punishable by the Common Law, though not by the Statute.

So for this, Thou hast forged a Recognizance taken before Fisher and others. Croo. 1. last publisht. 883.

So for this, Thou hast sued out a Writ against me, and got a counterfeit Warrant of thine own making. Mich. 20. Jac. B. R. Stones Case. It lay for this.

So for this, Thou hast forged a Privy Seal, and a Commission, why dost not thou break open thy Commission? Croo. 1. part 237?

So for this, A. hath forged the last Queens Writ. Yelvertons Rep. 146.

So for this, Thou hast forged a Writ of Quare impedit. Croo. 1. part last publisht. 178.

So for this, Thou camest with a counterfeit Commission, when he had a good Commission. Yorks Case.

So for this, said of a Warrant on a Lattiat that comes under the Sheriffs name, This is a counterfeit Warrant made by Mr. Stone, Innuendo, the Plaintiff had counterfeited it. Croo. 2. 648.

So for this, said of one that had got a License out of a Court to compound with an Informer, That he forged it. Bulstr. 2. part 136.

So

So for this, Thou haſt couzened the ſtate of two thouſand pound, and haſt foiſted in words into the order of compoſition. Stiles.

But this Action will not lye (as it is ſaid) for this, Thou haſt made a falſe Bond. Nor for this, Thou haſt made a falſe Deed. Paſche. 39. Eliz. B. R. Of a Deed. Sect. 3.

Nor for this, This is the writing of J. S. he hath forged this Warrant. Hobb. Rep. pl. 3.

Nor will it lye for this. A. ſhewed me a Bill of forty pound [Innuendo ſuch a Bill as White had made him] unſealed, and after he ſhewed it him ſealed, and that A. had forged a Seal to the ſaid Writing. Hobb. Rep. pl. 8. 48.

Nor for this, This is John Thomas his writing, he hath forged this Warrant [Innuendo, a Warrant made, &c.] for its incertainty in the word, warrant, and the Innuendo will not aſcertain it. Hobb. Rep. pl. 4, 48. Thomas and Areworths Caſe. Innuendo. Incertainty.

Nor for this, He hath forged a Warrant, for it may be a warrant for a Buck.

It was the opinion of ſome Judges, that it may lye for this, Thou art a forger of Writings. But of others not. Croo. 1. laſt publiſht. 553.

Nor for this, Thou art a couzenning Knave, and ſhewedſt forth a forged Deed. Bulſtr. 2, part 132.

Nor for this, He hath forged a Writing, For this is altogether incertain. Hobb. Rep. pl. 330, and an Innuendo ſuch a writing, will not make it certain and actionable. Hob. pl. 48.

Harvey and Duckins Case. And yet it will lye for saying, He hath forged a Deed. Owens Rep. 47.

This Action will not lye for this, He hath made a false Bond. Croo. 1. last publisht. 607.

It is said to be adjudged not to lye for this, Thou art a forger of false Writings. Yet see the contrary before said to be adjudged otherwise.

Nor (as it seems) for this, Thou hast made false writings, thereby to get my Land from me. Croo. 1. part last publisht. 855.

Of a Record. Nor for this, One of you forged a Subpena out of the Chancery, Innuendo the Plaintiff,

Innuendo. for this is incertain, and the Innuendo will not make it certain.

Nor for this, Thou hast made the great Seal.

Nor for this, Thou wast cubbed up for forging of Writs. Croo. 1. part last publisht. 234.

Nor for this, He hath made false Records, and verifies them. Stanhops Case.

Nor for this, thou getteſt thy living by false Writs.

But here we must also anner the former Rules.

1. That for many of the words before named not actionable, if the party of whom they be spoken have any special loss by them, he may have this action for them.

2. In this Action he need not alledge any special damage by the words, where the words are in themselves actionable.

3. But

3. But the words must be malicious, false, certain, and under the Rule of qualification by other words, for by these things the words that otherwise in themselves may be actionable, may prove unactionable.

CHAP. XIV.

Of Words of Slander about Matter of Incontinency.

As to this, these things are to be known. Sect. 1.

1. That Slanders are Defamations of this nature being said to be spiritual, and properly to be heard and Determined in the Spiritual Court, and there the party grieved by them is to have his relief.

2. That a charge of Incontinency is notwithstanding (in the eye of the Common Law) a foul charge, and punishable in divers cases by corporal punishment, for if a woman have a Bastard, she is by this made lyable to such punishment as the Judges in discretion shall inflict, and they alwaies inflict, whipping, imprisonment, or the like.

3. That generally this Action will not lye for Slanders of this nature, but in Cases where a man hath, or is like to have some special damage by the speaking of the words. And yet in some special Cases the Action is given, because it is necessarily intended to be a damage to the party of whom they are spoken, and that it cannot be otherwise.

4. That whiles there was a Law to punish

more severely Adultery, Fornication, Bawdry, and the like offences, the speaking of words of this nature might happily be more dangerous than now it is; that this Law is removed. See Stiles Rep. 424. 452. 455.

It hath therefore been adjudged, resolved, or ruled by the Judges. And it is said by them, that this Action will lye for this, You are a Whore, and have played the whore with so many men you cannot number them. And that Judgement was given in this Case for the Plaintiff without Averment of any special loss by the words. Stiles Rep. 328.

So for this, This is the Whore that my man C. did beget a Bastard upon, and spent all my money upon, and the Queen hath been too long in Town for my ease. Stiles Rep. 274. 277.

So it will lye for this said of one about to be married, She is a Whore, and I will maintain it, and I will spoil her marriage. And it was said, it shall be actionable, albeit she did not lose her marriage by it. Bendloes Rep. 148. Godb. Rep. 273.

So it is said it will lye for this, Thou art a Whore, and I will prove thee a Whore, and thou hast made my house a Bawdy-house. Williams Case. B. R. Trin. 1655.

So for this said to a woman married, Thou art a common Bastard-bearing Whore, and hadst two Bastards by a Butcher, and I will prove it. Stiles Rep. 424.

So for this said to a Maid or Woman, Thou art a Whore, and hast had a Bastard; or to a man, Thou art a Whore-master, and hast had

had a Baſtard. Bulſtr. 2. part 90. And yet there in his 2. part 89. it is ſaid to be agreed that it will not lye for theſe words, Thou art a Whore. *

Nor for theſe words, Thou art a Whore-maſter, or, thou didſt lye with ſuch a woman, or, ſuch a man did lye with thee, except he have ſome ſpecial damage by the words. Coo. 4. 16, 17. Croo. 2. 163. Mich. 39. Eliz. B. R. and that without any Averment of any ſpecial loſs, for they are by Law puniſhable for this, Coo. 4. 17. Sect. 2.

So for this, He hath got Mary Nob with child, and the child is his, and I have tried it with a Sieve, and a pair of Sheers; for the firſt words, although the latter words be inſenſible. Stiles Rep. 379. Averment.

So for this ſpoken of a Lady to whom the Earl of Kent was a Suitor, A. hath reported that he had the uſe of her body [Innuendo, that he had carnal Copulation with her] whereas A. did never make any ſuch Report. Croo. 2. 162. By report.

So for this, She is a Whore, and I will prove it, and her plying place is in Cheap-ſide, and ſhe gets forty ſhillings a night by playing the Whore. Hills Caſe. B. R. Stiles Rep. 394. but it ſeems it was for the laſt words.

So for this, ſaid of a Baſtard child whereof A. B. was delivered, He, [Innuendo the Plaintiff] is the reputed Father of the Baſtard. Innuendo the ſaid Baſtard child; if withal he aver, that he loſt a preferment in Marriage by it, or that it was the baſtard of one not Averment.

able

able to keep it, or that it was some special loss by one way or other to him, and not otherwise. Croo. 1. 113.

So for this, Thou art a Whore-master, and hast laine with Browns Wife, and hadst to do with her against a chair; if thereby he lose his marriage, &c. Croo. 2. 323.

It is said to be adjudged to lye for this, My Wife is a Whore, and she was naught with W. S. [Innuendo the Plaintiff] and had I had a candle, I had taken them together doing the deed. With an Averment, that he did by this lose his preferment in marriage. Bulstr. 3. part 48.

Averment.

So for this, where a rumour is abroad of a Bastard drowned, for this, I do verily believe the bastard child was thine; and this Action was laid without any Averment that there was such a Bastard; and if there were none such, let the Defendant plead it, and save himself. Stiles Rep. 221.

Averment.

It is said that this Action will not lye for this, Thou art a Whore, and J. S. hath had the use of thy body, the Cart is too good for thee, without the averment of some special damage by the words. Croo. 1. last publisht 582. 583. Goldsb. 172. So neither will it lye for this, A. is an arrant Whore, and would have lain with me seven years since, and I would not unless she would go to the hedge. For this is a spiritual slander only. Croo. 1. part last publisht 582. 587.

Sect. 3.

Nor for this, She is an arrant Whore, and hath had two bastards in Ireland. Brownl. and Goldsb. Rep. 16.

Nor

Nor for this, He is the reputed Father of that Baſtard Child, Innuendo, &c. Unleſs he aver that ſome temporal loſs that came unto him by it, as a loſs of marriage, or that it is ſuch a ones Baſtard as is not able to keep it, and ſo he by this is charged to keep it, or chargeable to the Pariſh, or the like. Croo. 1. 315.

Nor for this, Thou art a common Quean, a baſe Quean, a pipperly Quean: Winches. Rep. 14.

Nor for this, Thou art the hackny whereof J. S. Bodins Caſe. Nor for this, Thou art a Quean and a theeviſh Whore. Hill. 17. Jac. B.R. Nor for this, Thou waſt rid up and down Stairs. M. 9. Jac. B. R. March. 2. part 5. Noys Rep. 75. Stiles Regiſt. 8. Coo. 4. 18. And yet if theſe things were true, a man ſhould be puniſhed for them with corporal puniſhment, as impriſonment, &c.

Nor will it lye for this, Thou art a forſworn Whore, and an old Baud. William Read and his Wives Caſe. Hill. 15. Jac. B. R. Croo. 462. Nor for this, Thou art Matcombes Hackny, thou art a theeving Whore, and a pocky Whore, &c. Croo. 2. 514. Godb. Rep. 278. Stiles Rep. 100. But perhaps theſe words ſpoken in London may lye.

Nor for this, Away you pick-pocket, thou art a ſcurvy pocky Whore. Albeit a ſpecial loſs may be averred by theſe words. Croo. 2. 499. Pick-pocket.

But it is generally held, that no Action will lye for calling of a woman (be ſhee married

married or unmarried) Quean, Harlot, Whore, common Whore, Adultereſs, Pimpe, Baud, baſe Quean, common Quean, pipperly Quean, or the like. **Nor for calling of a man**, Whore-maſter, common Whore-maſter, Whore-monger, Adulterer, Fornicator, Whorſon, or the like. **For any of theſe words alone, without other words with them.** Croo. 1. 168, 189. 239. 288. 315. 27. H. 8. 17. Coo. 4. 15. 17. Noys Rep. 75. 85. Winches. Rep. 14. Croo. 2. 499.

And yet to call one Whore in London, it ſeems is Actionable. Stiles Rep. 229. 245, Coo. 4.

So alſo may any of the other words be Actionable, if by the ſpeaking of them, he of whom they are ſpoken have any ſpecial damage, as that he loſeth his marriage, or a parſonage, he is like to have: And this he muſt be ſure to aver in a Declaration, or the like, and not otherwiſe, Stiles Rep. 287. Coo. 4. 16. Bulſtr. 2. part 90. Croo. 1. 293. Godb. Rep. 275.

For calling one Baud, or ſaying he keepeth a Baudy-houſe. Sect 4.

It is agreed, that this Action will lye for any man or woman, (eſpecially ſuch a one as keeps an Inne, Alehouſe, Tabling-houſe, a common Victualling-houſe; for theſe words, He [or ſhe] keeps a Baudy houſe. **So for this,** He [or ſhe] keeps a houſe of Baudry. Bulſtr. 1. part 138. Coo. 4. 14. 18. Stiles Rep. 322. 326. Croo. 1. 189. 166. 239. 255. Croo. 1. part laſt publiſht 582. Brownl. 1. part 162. Kitch. 173. Noys Rep. 72. 73. &c. 117. March of Slanders 2. part 5. Stiles Regiſt. 8. Croo. 1. part laſt publiſht 787.

And theſe words are moſt dangerous to be ſpoken in London; for, for this offence a man may be Indicted, Fined, and Impriſoned; and in London Ignominiously Carted alſo. Eliz. Thorns Caſe 24. Jac. B. R. London.

So for ſaying, A. the wife of B. is a Baud, and keeps a Baudy houſe. Croo. 1. 286. 350. March. Rep. pl. 249. Hughes Abridgement. 40. Trin. 16. Car. 1. B. R. Morgans Caſe. Trin. 18. Car. 1. B. R. Chambers Caſe.

And to ſpeak ſuch words of one that keeps a Common houſe, Inn, &c. this will bear an Action without Averment of any ſpecial loſs ſuſtained by the words, but in other Caſes it ſeems to be neceſſary. And yet it is ſaid in ſome Books, that the Action will not lye for this, He keeps a Common Baudy-houſe. See for theſe things. Croo. 1. 168. 189. 239. 288. 27. H. 8. 17. Coo. 4. 17. Averment.

It ſeems that this Action will not lye at this day for ſaying of a man or woman, That he (or ſhe) is a Bawd. And yet in London theſe words may happily be actionable. Stiles Rep. 322, 323. Croo. 1. 168. Noys Rep. 85. 27. H. 8. 14.

It is ſaid to have been adjudged to lye for this, Thou art a Whore and a Bawd to thy Daughters, and keepeſt a Bawdy-houſe. Stiles Rep. 326. Hill. 3. Car. 1. Elſey and Harriſons Caſe.

So for this, He is not fit to bear office in ſuch a place, for he keeps a Common Bawdy-houſe in London. Bulſtr. 1. part 138. 27. H. 8. 15.

But

But is said, it will not lye for this, Thou art a Pander to Sir H. Vanyham. Noys Rep. 74.

But here also, as in the other heads of Actions of the Case, for Slanderous words, this is to be added, That where the Action shall be maintainable for words of this nature, they must be malicious false, certain, and under the Rule of qualification by other words. For if the words be true, or without malice, incertain, or such as may be qualified by the rest of the words spoken with them; no Action will lye upon them.

CHAP. XV.

Of other words importing some charge of transgression of a Penal Law.

Sect. 1. There are some other words that may sound to the hazard of a mans losse of his liberty, or of the enduring of some corporal punishment, for which this Action may lye. And therefore it is held that this Action will lye for saying of a man, That he spake against the Book of Common-Prayer, and said it was not fit to be read in the Church, in case where he can, and doth aver in his Action, that he hath any special damage by it, as that by this means he was cited in the Ecclesiastical Court, and there put to trouble and expence, &c. otherwise not. Brownl. 1. part 10. 13. 2. part 100. 129. March. Rep. pl. 191.

Speaking against the book of Common-prayer.

Averment.

It is said, that this Action may lye for calling of a great man Papist, or Recusant;

or

or for saying, that he hath a pardon from the Pope; or, that he can help any man to such a pardon. **But otherwise it is of such words spoken of an ordinary man.** Brownl. and Goldsb. 12. Brownl. 2. part 166. March. Rep. pl. 191. Leonards Rep. 335.

For saying of a man, he is a Papist, or hath been at Mass, or hath said Masses, or is a Priest.

It will not lye therefore against a man for saying of another, That he is a Simonist, a Recusant. Croo. 2. 284.

Papist. × Recusant. Priest.

Nor for this, Thou art an arrant Papist, and it were no matter if such were hanged, and thou, and such as thou wouldst pull the King out of his Seat if they durst. Hob. Rep. pl. 187.

×

To say of one, He is a Mass-Priest, or hath said Mass or hath heard Mass divers times, **may be actionable. And to say of one,** that he received a Mass-Priest into his House, knowing him to be such a one, **is dangerous.** Bulstr. 1. part 181.

But to say of a man, He hath received a Recusant, **without more words is not actionable,** Godb. Rep. 106. Croo. 2. 484.

This Action will not lye for saying of a man, He hath erected a Cottage contrary to the Statute. Godb. pl. 125. 106. March. Rep. pl. 191.

Erecting a Cottage.

Nor for saying, You did eat meat on a Friday. **Nor for this,** You did eat flesh Fridaies. Godb. pl. 125. March. pl. 191.

Eat Flesh Fishdaies.

Nor for this, Thou art a Sabbath-breaker.

Sabbath-breaker.

It may happily lye for saying, Thou didst strike another in a Church with a weapon. **But not for this,** Thou did quarrel in the Church. Godb. 125. March. Rep. pl. 191.

Strike in a Church.

It

Champertor. Maintainer of Suits. Buyer of Titles. Slander of an Officer. Maintenance.

It hath been said, that it will not lye for saying of one, He is a Champertor, or a Common Champertor, or a Common maintainer of Suits, or a Common Buyer of Titles. And yet this said of a Judge, Justice of Peace, Attorney, or such like officer, may be actionable. Hobb. Rep. pl. 145. and Hares Case. And yet in a Case B. R. 35. Eliz. It is said by Popham, Chief Justice, that it had been adjudged to lye for this, Thou maintainest such a Suit. Croo. 1. part last publisht. 297. See Hobb. Rep. pl. 188. Hetleys Rep. 139. 143.

Maker of forcible Entry. Rioter.

Nor for this, Thou hast made a forcible Entry into Lands. Nor for this, Thou art a common Rioter, or thou hast committed a Riot. And yet some think, that this may be actionable. Mich. 8. Car. 1. B. R. Stones Case.

Forestaller. Regrator. Ingrosser. Common Drunkard.

Nor for this, Thou art a Forestaller, Regrator, and Ingrosser.

Nor for this, Thou art a common Drunkard, a Drunkard, or a drunken Fellow. And yet some say it may lye for the first of these words, Croo 1. 207. March. 1. part of Slanders. 46. M. 8. Car. B. R. Finches Law. 186.

Common Swearer.

Nor for this, Thou art a Common Swearer.

Sect 2.

Nor (as it seems) will it lye for any charge of an offence against a penal Law, which doth not inflict Corporal punishment, save only in case of non-paiment of the penalty.

This

This Action will not lye for any of the words in the Cases following, viz. for saying, Thou art a common Libeller, or, a common Slanderer, or a common Quarreller, or, a common breaker of the Peace, or, a common Affrayer.

Common { Libeller. Slanderer. Quarreler. Breaker of the Peace. Affrayer.

Nor for this, Thou art a common Night-walker; nor for this, Thou art a common Evesdropper; Nor for this, Thou art a common Hedge-breaker; Nor for this, Thou art a common Misfeasor. Kitch. 173. 22. Ass. 31.

Night-walker. Evesdropper. Hedg-breaker. Misfeasor.

This Action is said will be maintainable against any man that shall say of another, he is a convicted Barretor; and for saying of a great man, of a Judge, Justice of Peace, Attorney, or the like Officer, He is a Barretor, or, He is a Common Barretor.

Common Barretor.

But it will not lye for saying of a Common person, He is a Barretor, or, He is a common Barretor. Hob. Rep. pl. 188. Hetlies Rep. 139. 143. Croo. 3. 171. Croo. 1. part last publisht. 171. Kitch. 173. Goldsb. and Brownl. 11. Hobb. Rep. pl. 188. Yelvertons Rep. 90.

It is said it will lye for this, that He hath been indicted for Barretry, if it were true, he was Indicted, and upon the Indictment acquitted. But had he been found guilty upon the Indictment, then the speaking of the words are justifiable, Stiles Rep. 49.

But it will not lye for this, Thou art a common Barretor, and I will Indict thee

for it at the next Seſſions. Hobb. Rep. pl. 188.

Knave. **Nor will it lye for calling of one (that is an ordinary perſon)** Knave, or falſe Knave, or cozening Knave, or cheating Knave, or crafty Knave, or the like, **will not bear Action. But to call one** Bankrupt-knave, Traytor-knave, or Perjured-knave, or the like, Huttons Rep. 13, 14. Bulſtr. 2. part 218. Stiles Rep. 17. Finches Law. 186.

Nor will it lye for this, Thou art a Villainous Knave; **Nor for this,** Thou art an arrant Knave, Croo. 1. laſt publiſht, 403. Finches Law. 186.

And yet it hath been adjudged to lye for this, Thou art a Pillory-Knave. Remember Brown, thou ſhouldeſt have been ſet on the Pillory. Croo. 1. laſt publiſht 11. Brown and Dawks and 26. Griffiths Caſe. Co. B. **But in B. R. the Court ſeemed to be of another opinion.** Croo. 1. part laſt publiſht 31.

Villain. **To have called a man Villain, when villenage was in force, would not have born Action; unleſs he had ſaid, Villain to ſuch a man, or Regardant to ſuch a Manor.** Finches Law 186.

Branded Rogue. **It is ſaid this Action will lye for this,** You are a branded Rogue, and have held up your hand at the bar, and deſerve to be hanged, and ſhall be hanged. Stiles Rep. 49. 50. Bulſtr. 1. part 138. Popham Rep. 177.

Rogue. **So for this,** Thou, Sirrah, art a Rogue, and a runaway Rogue, and didſt run away from Oxford, and art a Rogue upon Record at Oxford. **For theſe laſt words only.** Stiles Rep. 220.

But

But it is ſaid, that this Action will not lye for this alone, Thou art a Rogue. Coo. 4. 15. Kitch. 173. Nor (as ſome have held) for this, Thou art a branded Rogue. M. 9. Jac. B. R. Harriſons Caſe. Nor will it lye for calling a man Vagabond and a Rogue. Croo. 1. laſt publiſht. 843. 157. Finches Law. 186.

Vagabond. Rogue.

This Action will not lye for all theſe words ſpoken together, Thou art a Villain, Rogue, Couzener, Villainous Knave, and Blood-ſucker, Varlet, Raſcal, Vermine of the Earth, falſe Brother, Lyar, Conſpirator, Railor, Sower of Diſcord, Malefactor, Miſcreant, Hypocrite. And therefore a Fortiori, the Action will not lye for the ſpeaking of any one, or of ſome of theſe words. Popham. Rep. 177. Bulſtr. 1. part 138. Coo. 10. 131. Croo. 1. 352. Jenk. Cent. 7. Caſe 70. Kitch. 173. Croo. 2. 473. Huttons Rep. 13, 14.

Villain. Rogue. Couzener. Blood-ſucker. Vermine. Falſe Brother. Liar. Conſpirator. Railer. Sower of Diſcord. Malefactor. Miſcreant. Hypocrite.

And yet ſome of theſe words ſpoken of an eminent perſon, as a Peer of the Realm, may be actionable. Leonards Rep. 335.

Nor will it lye for this, to ſay, Thou art of ill Name; For the Law looks upon theſe but as haſty, paſſionate, and foolish words, not worthy of Action. But here it is to be obſerved, that for many of the words not actionable, they do notwithſtanding import crimes ſubject to ſevere puniſhments, viz. Impriſonment, Pillory, Fine, to be bound to the good behaviour, and the like; And therefore it is granted, that ſome of theſe words, when ſpoken to eminent perſons, or to ordinary men in Office, or Trade, with reference to their

offices, Trades, or to any man whatsoever, that is specially damnified by them, they may be actionable Coo. 4.15.17.20. Mich. 19. Jac. B.R. Harsons Case. March. Rep. 114, 115. Brownl. 1. part 9. 10, 12. Leonards Rep. 335.

And now that we are fallen upon some words spiritual, whereof our Common Law taketh no notice to punish, and upon light passionate, and vain words, not actionable, we will give you the residue thereof in this place.

CHAP. XVI.

Of words Spiritual, Passionate, and vain, for which no Action is given

Sect. 1. There are some other words, that have an import in them of Infamy and discredit, but are said to be of a spiritual nature, and not under the Conusance of the Common, but of the Civil Law. And there are other words that are said to be only passionate, vain, empty words, for either of which the Law gives no Action.

Spiritual Slanders. It is held therefore, that to call one Bastard, Whore, Whoremaster, Advowterer, Fornicator, and the like, these Slanders (if any be in them) are meerly spiritual, and are properly examinable and determinable in the Ecclesiastical Court. And therefore the Common Law doth not intermeddle with them, but in Cases where they are intermingled with some temporal damage occasioned by them to any man; in which Cases the Law doth give him repair for his damage only by

by this Action. And therefore the Plaintiff in such Actions is alwaies to make in his Suit brought a special Avermeur of his damage. Otherwise the Temporal Courts have no Conulance of the Cause. For this see chap. 14. And therefore no Action will lye in any of our Temporal Courts, for any charge of Incontinency (as a Defamation only) for calling of one Whoremaster, or Whore, for saying, that one was naught with another, that he or she hath had children by another man, or by another mans wife, or the like. But for this, he is to have his remedy in the Spiritual Court.

So if one man call another Heretick, Schismatick, Bastard, Miscreant, or the like, no Action will lye for this simply in any of our Temporal Courts, except the Case be such, that there be withal some special damage accrewed thereby to the party of whom the words are spoken. It hath been therefore adjudged, that this Action will not lye for saying, that he had two Bastards, and should have kept them; and that by reason thereof discord did arise betwæn him and his wife, and they were like to have been divorced. Croo. 2. 473. and 27. H. 8. 14. 17. Coo. 4. 16. 17. 20. Croo. 2. 163. 473. Bulstr. 2. 89. 12. H. 7. 22. Noys Rep. 85. Croo. 1, 107. 186. Goldsb. 36. Hobb. Rep. 376. 397. Coo. 5. 57. See chap. 3. chap. 14.

Heretick.
Schismatick.
Miscreant.
Advowterer.
Fornicator.

The words that follow are light and trivial, or hasty and passionate words; And therefore (as we have shewed before) they give no Action, as for any of these words, Villain,

Rogue, Knave, Baſtard, Varlet, Cheater, Couzener, Railer, Liar, Miſcreant, Vermine, Hypocrite, and the like; except it be in caſe where ſome ſpecial damage comes thereby to the party of whom the words are ſpoken. And it muſt be a real and conſiderable damage alſo; for an imagination, or ſuſpition of damage only will not ſerve. Croo. 2. 473.

Vermine
Falſe Brother.
Rogue.

And theſe following words are loked upon as trivial words, for which no Action is given, viz. Thou art a Vermine of the Earth, a falſe Brother, 25. Eliz. B. R. Thou art a Rogue, and I will prove thee ſo. Goldsb. 2. part 272.

Thou deſerveſt Hanging.
Varlet.
Hypocrite.

I never held up my hand at the Bar as thou haſt done. Goldsb. 2. part 272. Thou deſerveſt to be hanged. Hobb. pl. 185. Yelverton. Rep. 90. Goldsb. and Brownl. 11. He doth trade with Pirates. Bulſtr. 1. 216. He is a very Varlet, and ſeeketh to ſuppreſs his Brothers will. He makes ſhew of Religion, he is a very Hypocrite. Popham. 148. That he keeps ſuch Dogs about him, that mens Cattel about him cannot go in peace, that his Cattel are in every mans ground, and the like. Bulſtr. 1. 40. Dyer. 18. So neither will it lye for me for this, My Maſter hath put me away, becauſe I would not be a Papiſt, for he will keep no ſervants but Papiſts, Croo. 1. laſt publiſht. 308. for this is a trivial charge that hath no weight in it.

CHAP.

CHAP. XVII.

Of other words that have another import in them.

Sect. 1.

There are yet other actionable words, that do not bring a man into the danger of the loss of his life, liberty, or member, or other corporal punishment; but they are such as may bring him in danger of suffering in his Name, or Estate, or both. Some of these may be such as have relation to an infectious disease, which he is said to have. Some of them are such as may hinder him in a present preferment, that he might otherwise have. Some of them charge him with deceit, and cheating. Some of them may reflect upon him in relation to his office, or profession. And some of them in relation to his Trade, and way of getting of his living. For that which doth concern words relating to an infectious disease, take these Cases, That if a man be charged or reported to have any such great infectious disease, as for which he ought to separate himself, or to be separated by the Law, from the society of men, and this be not true that is reported of him, he may have his remedy for this wrong by this Action. It is held therefore that this Action will lye for the words in the Cases hereafter following, that is to say.

Words about an infectious disease.

It seems it lyeth for this, Thou art a Bankrupt Knave, and a Pocky Knave, let them bear witness that stand by, and I will prove it.

Pocky Knave.

it. Croo. 1. part last pubiisht 99. But it must be for the first, and not for the last words, and that it will not lye for the words, Pocky Knave.

Sect. 2. French-Pox.

This Action will lye for saying of another, That he hath the French-Pox. But not for this, He hath had the French-Pox. Stiles Rep. 64. Noys Rep. 151.

Inn-keeper.

And yet it is adjudged to lye for this, of an Inn-keeper. A. had the French-Pox, and hath set it in the house [Innuendo the Plaintiffs house] and W. S. [Innuendo the Plaintiff] and his wife have it, and all you, and that the husband alone may sue. Stiles Rep. 112.

Plague.

So it is said it will lye for this, Thou wentst to the Wells to be cured of the Pox. Stiles Rep. 219.

So for this, Thou art a Bastard getting Rogue, and hast a Bastard at Oxford, and art a Pocky Rogue, and for ought I know thou hast fil'd my bed full of the French-Pox, and no such Pocky Rogue shall lye with me. Stiles Rep. 283.

So for this, He hath caught the French-Pox and carryed them home to his wife. Hobb. Rep. 219. 290. Brownl. and Goldsb. 11.

So for this, Thou art an arrant Whore, and hadst the French-Pox. Owens Rep. 34. So for this, Mrs. Miller is a Whore, and hath had the Pox, and hath holes one may turn ones finger in them, Mrs. King the Apothecary gave her a drink for it, and therefore take heed how you drink with her. Croo. 2. 430. 144.

So for this, A. B. is laid with the Pox, or the Pox

Pox doth haunt him twice a year. Croo. 2. 144. Coo. 4. 17. and Ludſains Caſe M. 2. Jac. Per William and Fenner Juſtices.

So for this, Thou art a Pocky Whore, and the Pox hath eat out the bottome of thy belly, that thy guts are ready to fall out. Mich. 7. Jac. Co. B. Miles Caſe. Trin. 15. Jac. B. R. Millards Caſe.

So for this, Thou art a Pocky Knave, get thee home to thy Pocky Wife, her noſe is eaten with the Pox. Croo. 1. part laſt publiſht 878.

So for this, Thou art burnt, and haſt the Pox. Croo. 1. laſt publiſht 2.

So for this, Thou art rotted with the Pox. Croo. 1. part laſt publiſht. 648.

Inn-keepers. Victuallers.

And ſuch kind of words are then moſt dangerous, and out of queſtion Actionable when they are ſpoken of an Inn-keeper, Vintner, Tabler, Ale houſe-keeper, or the like perſons, whoſe life, and livelihood doth depend upon their ſociety with men; and therefore it is dangerous to ſay, that the Pox, or the Plague, or any ſuch great and infectious diſeaſe is in ſuch a common houſe, as Inn, Alehouſe, or the like, when it is not ſo; for if thereby his Gueſts forbear to come to him, or he ſuffer any other damage, he may have this Action, but otherwiſe not. Coo. 4. 17.

And therefore to ſay to a man going to ſuch a houſe, Go not thither, for the Plague hath lately been there, is Actionable. Hetleys Rep. 70.

So to ſay of a woman Inholder, She is a Pocky

a Pocky unwholsome Woman, doth wear a Scarfe about her neck to hide her Blanches there: it is a pocky houſhold, is thought to be actionable. Mich. 9. Jac. Ludmans Caſe.

So it is held that this Action will lye for this, He is infected with the French-Pox. So for this, Thou haſt the Great Pox. 21. Jac. B. R.

Thou art a Leaper.

So it is laid, this Action will lye for this, Thou art not worthy to come into any honeſt mans company, thou art a Leaprous Knave, and a Leaper. Coo. 4. 17. So for this, Thou art a Leaper. Trin. 4. Jac. B. R. Taylor and Perkins Caſe. Croo. 2. 144.

Averment. Sect. 3.

And for all theſe words in the precedent Caſes, it ſeems this Action will lye; And that (as ſome ſay) without any Averment of ſpecial loſs ſuſtained by them; Sed Quere of this. But theſe kind of ſlanderous words alſo are liable to all or ſome of the general Rules before named. And therefore they may for the incertainty, doubtfulneſs, or other matter in the words be rendred unactionable.

It hath therefore been adjudged or reſolved not to lye for the words in the Caſes hereafter following, viz. for this, Thou art a ſcurvy pocky Whore, unleſs thereby ſhe have ſome ſpecial loſs, by way of Trade, or by way of Marriage. Croo. 2. 498.

Nor for this, Hang him, he is full of the Pox, I marvel that you will eat or drink with him. Coo. 4. 17.

Nor for this, J. S. hath the Pox. Coo. 4. 15. 17. Hobb. Rep. 196.

Nor

Nor for this, He hath had the French-Pox, or Plague, for he may be well again. Noys Rep. 151.

Nor for this, Thou art a pocky Whore. 44. and 45. Eliz. and M. 7. Jac. Co. B.

Nor for this, Thou haſt lyen in Fullers Tub. 37. Eliz. Chappel and Burrows Caſe. Albeit this Averment be added, that none do lye there but ſuch as have the French-Pox. M. 44. 43. Eliz. Boddin and Jones Caſe.

Nor for this, He hath been in Fullers Tubb (meaning a Chirurgions Tubb, wherein none were but ſuch as had the Pox) I will not ſay of the Pox, but he lay in the Tub that time that Langhams Wife was laid of the Pox, and his hair falls from his head, and he is a pilled, and a Raſcal-knave, and a Villain, no Chriſtian, and thinks there is neither Heaven nor nor Hell. Goldsb. 135. pl. 34. Croo. 2. 144.

Nor for this, Thou art Matcombes Hackney, thou art a theeving and a pocky Whore. Innuendo, that ſhe had the French-Pox, and I will prove thee a pocky Whore. Croo. 2. 514. Godb. 278.

Nor for this, Thou art a ſcurvy, pocky Whore, and a Pick-pocket.

Nor will it lye for ſaying of a man, He hath the falling-ſickneſs. Hill. 4. Jac. B. R. unleſs it may diſable him in his Profeſſion, as a Lawyer, or the like. Hill. 4. Jac. B. R. Falling-ſickneſs.

It is adjudged (as it is ſaid) not to lye for this, to adviſe a mans friend not to keep company with J. S. becauſe he is full of the French-

French-Pox, because there is no malice in this. James and Rudleys Case. 40. 41. Eliz. Co. B.

Innuendo. Nor will an Innuendo enforce any of these words beyond their native sense, to make them actionable, that in themselves are not so. Coo. 4. 17.

And yet in some of these Cases, if any special damage come to the party by the words spoken, there happly they may be actionable, albeit they be not so in themselves. And in other Cases albeit there be damage, yet may not the words be actionable. Croo. 2. 499.

CHAP. XVIII.

Of words that hinder ones Preferment.

Sect. 1. There are other words, that do, or may hinder a Preferment that a man, or woman, may be in a possibility, and likelihood to have. And this falls out especially in one of these Cases, where a man is in likelihood to have a wife, or a woman a Husband, or one that is or may be an heir to an Ancestour, and in that Right, to have Land from him, or a Minister is in possibility and likelihood to have a Parsonage by presentation, or one is in a likelihood to be chosen to an office, or one is in a likelihood to be preferred to a special service, and by some scandalous words spoken by another against him to his disparagement he is prevented of, and put besides it; in such a Case, and for this Injury the Law gives him this remedy.

And

And therefore it is held, that this Action will lye for the words in the Cases hereafter following: That is to say, where a woman is like to have a husband, or a man is like to have a wife; and one say of him, or her, he, or she had a Bastard, or lay with J. S. or J. S. had the use of her body, or the like, and he or she lose the Match thereby; this Action will lye for him, or her that is so disappointed. Hill. 4. Jac. B. R. Dame Morrisons Case. Hobb. Rep. 196.236.350. Croo. 1. 110. 111. 195. 134. Croo. 2. 163.

So if one say of a man, Thou art a Whore-master, for thou hast lyen with with Browns wife, and hadst to do with her against a Chair. If by this he lose a preferment by a wife. Bulstr. 2. part 90. So to say of a Widdower, being about a wife, that he had lien with such a woman, and others carnaliter cognovit, and that by this he lost such a match. Croo. 1. 293. For a hindrance in Marriage.

So for this, Hath that Bastard A. B. caused you to be arrested? is this all the spight the Bastard can do you? if by reason hereof he lose a match he was about. Croo. 2. 422.

It will lye for these words, A. hath had a child, for she was conveyed to B. and there she laid her great belly, it is as true that she hath had a child, as that you sit there; For she was sent away with child, and if she had not a child, she hath made it away. Croo. 1. part 639.

If one be Heir to his Father, or Uncle, that hath an Estate of Land, or goods, which, in For an Heir. to hinder him of Land.

in likelihood he may bestow upon him; or if Land be given to his Grandfather, and the Heirs of his body, and he hath children, the Father and others that may be Heirs to the Entail, though in the second or third degree, and the Land being at sale, he is offered somewhat for his possibility; and after one shall say of him, He is a Bastard, and by this means he loseth it; he may have this Action, and not aver any special loss. Croo. 1. 337. Coo. 4. 13. 14. Coo. 10. 130. Owens Rep. 32. Yet see Popham. 187.

For a Divine to hinder him of a parsonage.

If a Divine be to be presented to a Benefice, and one say of him, He is a Heretick, or a Bastard, or Excommunicate; if thereby the Patron refuse to present him, and he lose his Preferment, this is actionable. Coo. 4. 16. 17.

For an heir to hider him of Land.

If one be Heir to his Father, Brother, or other Ancestour, who intendeth to settle his Land upon him; And another shall say of him, He is a Bastard, and thereupon the Father, Brother, or Ancestour give away the Land from him, this is actionable. Hughes Rep. 451. Bulstr. 2. part 276, 277. Croo. 2. 213. And this Action, some say, it hath been adjudged will lye, albeit the party have no special loss by the words. N. B. Entries 28. Trin. 25. Eliz. B. R. Godb. Rep. 519. Croo. 1. 337. Coo. 10. 130. Owens Rep. 32.

* For an Officer to hinder him of an office.

If some say of a Lawyer that stands for a Town-Clerks place, or any other place of preferment, He is an ignorant man, and unfit for the place, and thereby he loseth his place; this

this Action will lye. March. Rep. pl. 217. Sanderſons Caſe. 17. Car. B. R.

And ſo by the like reaſon, if any common ſervant be like to have a ſervice, and by ſome ſlanderous ſpæches he loſeth it. Agreed M. 15. Car. B. R. For a Servant, to hinder him of a ſervice.

So it lyeth for this, He is not worthy to bear office in ſuch a place, for he keeps a Baudy-houſe in London; if by this he loſe the place he ſtands for. Bulſtr. 1. part 138.

It is ſaid, that this Action will not lye for ſaying of another, He is baſe born. And yet that perhaps it may lye for ſaying of another; He is an Alien, if he have any ſpecial damage by it, Godb. Rep. 327, 328.

This Action will lye, for ſaying of a Maid, or a widdow, that hath a Suitor, I know her well enough, ſhe did dwell in Cheapſide, a Grocer did get her with child, if by this report the Suitor fall off, and ſhe loſe the match. Anne Davis Caſe. Coo. 4. 16. And there it was reſolved, that if he had charged her with bare Incontinency, that this had been actionable, if ſhe had loſt her Suitor by it. And for this ſaid in ſuch a Caſe, A hath reported that he had the uſe of her body at his pleaſure, ubi re vera. A. did not report it, and if upon this the Suitor fall off, the Action will lye. Dame Morriſons Caſe. Hill. 4. Jac. B. R. Croo. 2. 103. Jenk. Cent. 8. Caſe 7. Hindrance of Marriage.

So for this, (as it ſeems) to ſay of a woman about marriage, that ſhe is mad, if ſhe loſe her Marriage by it. Bendloes Rep. 155.

So this Action will lye for theſe words ſpoken

For a Servant that is hindred of his ſervice. Couzening.

ſpoken of a ſervant and Bayliff, to J. S. who doth much truſt him, and thereby he had his livelihood. He is a couzening Knave, and hath couzened his Maſter [Innuendo the ſaid J. S.] of a buſhel of Corn. Croo. 1. 345.

Sect. 3.

So for this, ſpoken to a Deputy, Clerk of one B. a Regiſter, who truſted him much, and the Deputy Clerk got his living by him, he is a baſe couzening Knave, he is a Cheater, and hath couzened his Maſter, Innuendo the ſaid B. Croo. 1. 406.

Averment.

So for this, ſaid of a Sho-makers ſervant, that lives by the Trade under him, He will cut his Maſter out of doors. But then he muſt aver, that by thoſe words in that place is underſtood, he will undo him. Bulſtr. 2. part 146.

Hindrance of Marriage.

So this Action will lye for theſe words ſpoken of a Widdower, who was like to have had good match, He is a ſharking fellow, and getteth his living by Deceit, and uſed himſelf violently to his former wife, and denied her neceſſaries, and is a needy fellow, and his conditions are wicked, and for his Religion, he is a Browniſt, &c. If by this he loſe his Match. But there it was agreed, that without an Averment of ſome ſpecial loſs, the Action will not lye in this Caſe. Croo. Rep. 1. 110. 195. 234. March. Rep. pl. 2.

So for this ſpoken of a Maid that hath many Suitors, That A. Reading is with child, and did take Phyſick to kill her child, and that by this ſhe loſt her Suitors. Hetleys Rep. 18.

So for this, Southold hath been in bed with Dorcheſters wife, if by this Southold loſe his Match he is about. Croo. 1. 195.

So

So for this, She is a whore, and her children [Innuendo, the children which she had by B. her late Husband] are Frambiſhes Baſtards Innuendo Nicholas Frambiſh; if by this ſhe loſe her Marriage. Croo. Rep. 235. And ſo for any ſuch like words ſpoken, by reaſon of which a man or woman doth loſe his or her preferment in Marriage. Stiles Regiſt. 7. Coo. 4. 16.

But this Action will not lye, for ſaying of a man that is a Suitor to a Widdow, Thou didſt couzen J.S. of her mony, in procuring falſe witneſſes to couzen her; albeit he loſe the Widow by the words ſpoken. Owens Rep. 47.

And for the words in the fore-mentioned Cales this action will lye, with Averment of damage where it is neceſſary, as in moſt (if not in all) Cales it is. Coo. 4. 13. Croo. 1. 13. 100. Bulſtr. 2. part 270. 277. March. Rep. 93. But all this kind of Action of the Cale for ſuch words as theſe, are to be ſubject to the general Rules of the other actionable words; for if the words be doubtful, incertain, or the like, they may hereby become unactionable. See more for this, chap. 14. ch. 21. ch. 22. And in ſome of the other chapters.

CHAP. XIX.

Of words importing a charge of Deceit and Couzening.

Sect. 1.

There are other Slanders, and Slanders in other Cales than theſe, which are before named; ſome of them import ſomething of fraud and couzening, for which this Action is given; It is therefore held, that this Action

on will lye for the words in the Cases hereafter following; That is to say, for saying,

About Cozening and Deceit. Of a Captain.

Thou Captain Greenfield hast received money of the King to buy new Saddles, and hast cozened the King, and bought old Saddles for the Troopers. Pasche. 17. Car. B. R. Sir Richard Greenfields Case. March. Rep. pl. 135. So to charge an Officer, or Tradesman with cozening is dangerous; and therefore it is held Actionable, to say of an Inn-keeper,

Of a Tradesman.

There is no man that comes to thy house, but thou dost cozen him. Hetleys Rep. 123.

And yet it is said to be adjudged not to lye, for saying of a Butchers wife, that doth use to sell Meat in her Husbands absence, She is a cozening woman, and hath cozened one of her neighbours of four pound, and I will prove it. Huttons Rep. 14.

To say of a Brasier, Thou hast cozened me of a Pan, is Actionable. Stiles Rep. 364.

Of a Bayliff, or Servant.

It lyeth also for one that hath the oversight of a Gentlemans Farm, and sells his Corn, for these words, Thou art a cozening Knave, and thou hast cozened me in selling false measures in my Barley, and the Countrey is bound to curse thee for selling with false measures, and I will prove it; and thou hast changed my Barley which I bought of thee. Brownl. Rep. 1. part 4. Hobb. Rep. pl. 93.

So for this, said of a Servant and Bayliff to J.S. who doth much trust him, by which he gets his living, thou art a cozening knave and hast cozened my Master of a Bushel of Corn. Croo. 1. 345.

So

So for this, ſaid of a Deputy Clark to one B. a Regiſter, who truſted him much, and by which he got his living, He is a baſe cozening knave, he is a cheater, and hath cozened his Maſter A. B. Croo. 1. 406.

So for this, You have cozened the State of two thouſand pound, and I will prove it; for you have received twenty five thouſand pounds profit of the Office, and not compounded for it, and have foiſted in words in the order of your compoſition. Stiles Rep. 436. Of an Officer of the State.

So (as it is thought) for this, ſaid of a Lord of a Mannor, Thou art a cozening Knave, and keepeſt cozening Courts, to cozen men of their Fines. 4. Jac. B. R. Of the Lord of a Mannor.

So for ſaying of a Gold-ſmith, I will prove thee a Cozener, for ſelling me a Saphyr for a Diamond. Brownl. 2. part 100. Kitch. 173.

It hath lain for this, ſpoken in London, Thou art forſworn in the Carpenters Hall, and didſt rob the Hall, and deceive the Company of twenty pound. Croo. Rep. 1. laſt publiſht 787. Of an Officer in London.

So this Action will lye for a charge of cozening, impoſed upon an eminent perſon; as to ſay of a Gentleman of the Privy Chamber of the King, That he is a cozener, and liveth by cozening. Croo. 2. part 427. Of an eminent perſon.

But in all, or moſt of theſe Caſes to make ſuch words as theſe Actionable, there muſt be an Averment of ſome ſpecial damage to the Plaintiff by the words: and in all Caſes, if the truth be ſo, it is beſt ſo to ſet it forth in the Declaration. Averment.

But it is held, that this Action will not lye Cozener.

for the words in the Cases hereafter following; that is to say, it will not lye for calling of a common person, cozener, cozening knave, cheating knave, cheater, or the like. Finches Law 186. Bulstr. 1. 138. March. Rep. pl. 135.

Cheater.

And yet perhaps to speak so of an eminent person, or of an Officer in reference to his Office, it may be Actionable. Croo. 1. 345. Croo. 2. 427. Godb. 284.

Officer.

Eminent person.

It will not lye (as it is said) for this said of a man that is a Suiter to a Widow, Thou didst cozen J. S. of her money in procuring false Witnesses to cozen her. Albeit he lose the Widow by these words. Owens Rep. 47.

Nor for this, said of an ordinary Gentlewoman, Thou art a cozener and livest by cozening. Croo. 2. part 427. Coo. 4. 16.

Nor for this, Thou hast cozened J. S. in buying Saddles for him. Godb. Rep. 284. Pasch. 27. Car. B. R.

Nor for this, Thou hast cozened me and my two kinsmen, and art a false knave. 26. Eliz. Kerby and Wallers Case. Godb. Rep. 284.

Nor for this, said of a Mayor, He hath cozened all his Brethren, &c. See in March. Rep. pl. 135. B. R. Mayor of Tibbertons Case.

Nor for this, Thou wert a Suiter to a woman in Southwark, and didst cozen her of her goods, and procuredst certain false witnesses to be forged. Croo. 1. last publisht 99.

Jugling.

Nor for this, Thou hast used Jugling with me. Croo. 1. part last publisht 178.

Sect. 2.

Nor for this, Thy Credit hath been called in question, and a Jury being to pass upon it, thou

thou foiſtedſt a Jury early in the morning, and thy Lands thou haſt gotten by lewd practiſes. Croo. 1. part laſt publiſht 348.

Nor for this, Mr. Crook came unto Cornwel with a blew coat on his back, and hath now gotten together a great quantity of Wealth, by trading with Pirates, cozening in the tale of Pilchers, and by extortion. Bulſtr. 1. part 216. Cozening in ſale of Fiſh.

Nor for this, He is a cozening knave, and cozened a poor man of one hundred pound, and all the Georges are cozening knaves. Huttons Rep. 14. **Nor for this**, He is a cozening knave, and hath cozened me of 40 pound. Hutt. Rep. 14. Incertainty.

Nor for this, He is a falſe knave, and keeps a falſe debt book, for he chargeth me with the receit of one piece of Velvet, which is falſe, Huttons Rep. 14. In a falſe debt book.

Nor for this, Thou art a pilfering Merchant, and haſt pilfered away my goods from my wife and children. Huttons Rep. 14. Owens Rep. 56.

Nor for this, ſpoken of a man that is no Tradeſman, A. is a cozening knave, and ſo I have proved him before the Lord Mayor, for ſelling of a Saphire for a Diamond. Huttons Rep. 13. In ſelling a Saphire for a Diamond.

Nor for this, Thou art a cozening knave, and haſt cozened me of five hundred pound. Huttons Rep. 13. **Nor for this**, Thou art a cozening knave, and ſhewedſt forth a forged Deed. Bulſtr. 1. part 132. By ſhewing a falſe Deed.

Nor for this, Thou haſt cozened the Town of B. of ſo much money, **albeit he were an Officer, and to account.** Bulſtr. 2. 228. **Nor for this**, He hath cozened the Earl of H. of as much as he, Innuendo **the Plaintiff**, is worth. Bulſtr. 1. part 162. 163. Cozened a Town.

Of a Merchant

Nor for this, said of a Merchant, Thou art an arrant knave, for thou hast cozened all Coventry. Bulstr. 1. part 162, 163.

Nor for this, spoken of a Merchant, a Gentleman of the Kings Privy Chamber, or whosoever else he be, He is a cozening knave, & lives by cozening. Godb. Rep. 407. Goldsb. 3, 4.

Cozening of a Town.

Nor for this, You bought Land when you cozened the Town in your accounts. Bulstr. 2. 228.

In the suppressing of a Will.

Nor for this, Thou art a Varlet, and hast suppressed thy Brothers Will to deceive others of Legacies. Trin. 17. Jac. B. R. Godfreys Case,

Nor for this, Thou hast cozened me and all my kindred. 18. Eliz. B. R. **Nor for this,** He hath cozened all the Town of Coventry. **Nor for this,** He is a very bad fellow, for he made A. drunk in the night, and cozened him of one thousand marks. Goldsb. 125. pl. 12. **Nor for this,** Thou getst thy living by cozening. Croo. 2. 427.

Incertainty.

Deceit in Trade.

Nor for this, He is a cozening knave, for that he hath sold me a chain of Copper, for a chain of Gold, and that he is a cozening knave upon Record. **But if he be a Gold-smith, and got his living by buying and selling of Chains and such wares, there perhaps it may lye,** Croo. 3. 171. Croo. 1. last publisht 171.

See more in Chap. 18. Chap. 21. Chap. 22.

For all these last Cases of Unactionable words, this is also to be added; that if it be so that the party of whom they are spoken, sustain any special damage by them, he may perhaps have an Action of the Case upon them; but then he must be sure in his Declaration

ration to Aver it. See March. of Slanders part 100. 1. Averment.

This alſo is to be known herein; that The Slanderous words of this kind, are alſo liable to the general Rules of other Slanderous words, that is, they muſt be falſe, malicious, certain, and the like, or they will not be Actionable.

See more in Cap. 18. and 19. and in other Chapters.

CHAP. XX.

Of ſcandalous words that relate to men in their Offices, Profeſſions, and places of Truſt.

Sect. 1.

THere are other ſcandalous words that reflect upon men in their Offices, Profeſſions, and places of Truſt; and theſe are either ſuch as charge them with corruption and diſhoneſty, or with ignorance and unskilfulneſs therein; and for this, it may go for a Rule, as to ſuch Perſons, generally that for any words that ſhall import a charge of unskilfulneſs, or diſhoneſty and corruption, in, and about their Offices, this Action will lye.

It is therefore agreed, that this Action will lye for a Biſhop againſt him that ſhall ſay of him, He is a Papiſt, or Recuſant; or that he hath received a Pardon from the Pope, or the like. Brownl. and Goldsb. 12. and 2. part 166. March. Rep. pl. 191. Of a Biſhop. Recuſant. Papiſt.

This Action will lye alſo for a Judge, Juſtice of Peace, or ſuch like Officer, for the words in the Caſes hereafter following ſpoken of him, viz. That he is a corrupt Judge; or he is a Of a Judge, or a Juſtice of Peace.

For matter of corruption.

corrupt Juſtice of Peace; or he is a corrupt Officer; or he is corrupt Man; **if it be ſpoken with reference to his Office.** Coo. 4. 14. 16. 19.

So for this, He gave a corrupt Sentence in ſuch a Cauſe. Popham. Rep. 35. Popham. 177. Hobb. Rep. 35.

So for this, He doth not adminiſter true Juſtice. Croo. 1. part laſt publiſht 358. **So for this**, He dealeth corruptly.

So for this, He is a falſe Judge, or he is a falſe Juſtice of Peace, or he taketh Bribes. Coo. 4. 16. Broo. 112.

So for this, He is a lewd Juſtice of Peace, Croo. 1. part laſt publiſht. 158.

Felon. Barretor. Champertor. Maintainer of Suits. Extortioner.

So for ſaying of ſuch a one, He is a Felon, or he is a common Barretor; or he is a common Champertor, or he is a common Maintainer of Suits; or he is an Extortioner, or he hath committed Extortion, **or the like.** Hobb. Rep. pl. 145. 188. Goldsb. and Brownl. 11. 30. 19. Popham. Rep. 35. Kitch. 173.

So for this, He is a Basket Juſtice, a partial Juſtice, I will give him five pound a year for his gifts about Juſtice matters; **And yet it is ſaid in this Caſe, that none of the words but** partial Juſtice **are actionable.** Croo. 2. 90.

So for this, He took forty ſhillings for a Bribe. Yelvertons Rep. 142.

So for this, You have extorted twenty ſhillings above your due Fees. Stanleys Caſe. Paſche. 14. Jac. Coo. 10.

So for ſaying of ſuch a Judge [or Juſtice] He covereth and hideth Felonies, and is not worthy to be a Judge [or Juſtice] of Peace.

So

So for this, you cover and hide Felonies. Dyer. 72. Stuckleys Caſe. Paſch. 7. Jac. B. R. Coo. 4. 16.

So for this, There is a Neſt of Thieves in Dale, and Sir John Bridges is the maintainer of them. Pophams Rep. 180.

So for this, You, out of malice and ſpleen have perverted Juſtice, and have wreſted the Law many times, to ſerve your own turn. **And in this Caſe there was no Averment made in the Action, that the words were ſpoken with reference to his Office.** Beamond verſus. Sir Henry Haſtings. Mich. 7. Jac. B. R. Bulſtr. 1. part 96. Croo. 2. 241. Averment.

So for this, He is but a half-eared Juſtice, he will hear but on the one ſide. Croo. 1. 162.

So for this, He can hear but with one ear. Chomleys Caſe. Hetley. Rep. 123.

So for this, You are a ſweet Judge [or Juſtice of Peace] you ſent your Warrant for J. S. to be brought before you for ſuſpition of Felony, and afterwards ſent J. D. to give him warning thereof, that he might abſent himſelf. Burton verſus Tokin. Croo. 2, 143. 413.

So for ſayng theſe words, I have been often with him for Juſtice, but never could get any at his hands but Injuſtiçe. Croo. 1. 9.

So for this, You are an Ambodexter, and you take mony on both ſides. M. 2. Jac. B. R. Dawtries Caſe.

So for this, Sir William Buttons men have ſtoln ſheep, and he ſpoke to me not to proſecute them. Popham. Rep. 180.

So for this, He hath been the cauſe of the

overthrow of an hundred men by falſe and ſubtil means. In Brownl. 2. part 299. March. Rep. 8.

Sect. 2. **So for this**, A. being arreſted as acceſſary of **Felony**, Mr. Stafford [Innuendo the **Plaintiff**] knowing thereof, diſcharged him by agreement of three pound, to which Mr. Stafford was privy, whereof thirty ſhillings was to be paid to him, and was paid to his man by his appointment. Trin. 36. Eliz. B. R. Croo. 1. part laſt publiſht. 536.

So for this, He hath received mony of a thief, that was apprehended and brought before him for the ſtealing of certain ſheep, to let him eſcape and to keep him from the Gaol. Paſche. 17. Eliz. B. R. Brownl. 1. part 11. Cottons Caſe.

So for this, ſaid of a Judge that had given his ſentence in a Cauſe between the Defendant and another, That the ſame ſentence given by the Plaintiff] Innuendo, &c. was corruptly given. Croo. 1. laſt publiſht. 305.

So for this, Mr. Gilbert hath done me wrong, in returning the Recogniſance of Podger in twenty pound where it was taken in ten pound, and the Sureties in ten pound a piece. Paſche 4. Jac. Gilberts Caſe. B. R.

So for this, Thou haſt forged a Recogniſance, taken before Fiſher and others. Croo. 1. part laſt publiſht. 883.

So for this, ſaid, where, upon Articles upon Oath before the Judge or Juſtice againſt me, I ſay, By your means I had wrong at the Seſſions, for you cauſed Hickman to ſwear againſt me that which was not true [Innuendo **the ſaid Oath**. Croo. 2. 308. Yelvertons Rep. 221.

So

So for this, Mr. H. did put in of his own head these words into an Examination taken by him, viz. J. S. did steal twenty sheep of such a mans. And for saying this further of the Justice, He is a debauched man, and not fit to be a Justice of Peace. But it was said, the Action did lye for the first, and not for the last words, Stiles Rep. 22.

So it seems for this, where one is arraigned, and acquitted of a Felony, and the prosecutor shall say, if A. and B. had done Justice, C. had been hanged for robbing me. And that for this, A. B. and C. may have this Action.

This Action will lye, for saying of a Judge, Justice of Peace, or such like Officer, He hath no skill in his Office. Hill. 16. B. R. For matter of Ignorance.

But this action will not lye for such a person, where a discourse is about him, as to his body, and health, and therein, one of them shall say, He is a corrupt man. Nor where the discourse is about his Estate, and therein one of them shall say, He is a Bankerupt; Nor where a discourse is about his Usury, or his fraud, in an Executorship, and therein one of them shall say, He is a corrupt man, or he is a false man, or the like. And therefore in these and such like Cases, where the Plaintiff shall set forth but part of the words of the Conference, the Defendant must set forth the occasion of the words by the rest of the Conference, Coo. 4. 14. But if the words be spoken without any such references, as in the Case before, they will be Actionable, for they shall be so intended, and taken in the worst part, Hob. Rep. pl. 351. For other Matters. Words of qualification.

Nor

Nor will this Action lye for this, You do openly maintain and countenance the worſt people againſt Gods Laws and the Queens. Croo, 1. part laſt publiſht. 297.

This Action alſo will lye for ſuch an Officer for this, He is not worthy to be in ſuch an Office, for he keeps a common Bawdy-houſe in London. Simpſons Caſe. Bulſtr. 1. part 138.

He keeps a Bawdy-houſe.

So for this, ſaid to ſuch a one, You are no true Subject, **Or for this, ſaid to his man**, Thou ſerveſt a Maſter that is no true Subject, Croo. 2. 202.

So for this, He and his Son ſought to kill me, and his Son threw a Dagger at me, and run me through the hoſe twice, and all this by the procurement of the Juſtice of Peace, Croo, 2. 56. Yelvertons Rep. 57.

But this Action will not lye for this, He is a falſe Juſtice, **vel his ſimilia**, Broo. Action of the Caſe. 112.

Incertainty.

And it ſæms it will not lye for this, I heard it ſpoken that Mr. Read was one that was at Burrels Robbery, and that four of them went to his houſe the next morning; **ubi re vera**, the Defendant never heard any ſuch words, Sed quere, for the words have a ſound of Actionable words. See Croo. 1. laſt publiſht. 644,645.

Sect. 3.

This Action will not lye for a Judge, or Juſtice of Peace, or ſuch like Officer, for this, He is a baſe Raſcal, Villain, and by unjuſt means doth moſt villainouſly take other mens rights from them, and keeps a company of thieves and traitors to do miſchief, and gives them nothing but baſe blew Liveries, and this all the Coun-

trey

trey reports. And other good he doth not. And yet two of the Judges were for the Action in this Case. Croo. 2. part 58. Dyer 75. 158.

Nor for this, He hath delivered untruths upon his Oath, in his Answer in Chancery, at the Suit of J. S. Croo. 1. part last publisht. 374.

Nor for this, He hath but one Mannor, and he hath gotten it by swearing and forswearing, Coo. 4. 15. Nor for this, He hath gotten all that he hath by swearing and forswearing, New Book of Entries. 4. 22.

Nor for this, For my ground in D. he seeks my life. Coo. 4. 15.

Nor for this, You have couzened the Earl of Hertford, of as much as I am worth, Bulstr. 1. part. 163. Cozening.

Nor for this, He is a Recusant and a Simonist, &c. Croo. 2. 484.

Nor for this, He is a Blood-sucker, and sucketh Blood. Croo. 1. last publisht, 306. 433. Bloud-sucker.

Nor for this, said in a Conference about him, and his Tenants of his Mannor, When your Tenant took his Land, you couzened him of his Fine, and dealt corruptly, and I will make you appear where you dare not shew your face, for your base dealing. Trin. 4. Jac. Cozening.

Nor for this, He is an Usurer. Nor for this, He hath not dealt honestly about a Will. Coo. 4. 16. New Book of Entries 22. Usurer.

Nor (as it seems) for this, If any man will give him a Bribe, as a Sheep, or a couple of Capons, he will take them; And yet this seems to be a foul Charge, Croo. 1. part last publisht. 306. 433. Inclination or Affection.

But

But in these kinds of Actionable words these things must be observed.

1 That the Plaintiff must be sure to set forth, that he was such a Judge, Justice, or Officer at the time when the words were spoken of him, or the words will not bear Action.

2 That he is not bound to set forth, that he had any special loss by the words.

3 That words of this nature are subject to the Rules laid down in other Cases before, for other Actionable words, they must be certain, false, malicious, and not liable to qualification, &c. For if the Case be so that they be true, or incertain, or not malicious, or subject to qualification by the occasion of speaking, or other words spoken at the same time, if so it be, they may by this be unactionable. Croo. 1. part 97. 162. Bulstr. 1. part 36. Yelvertons Rep. 153. 159.

For a Serjeant, or a Barrister at Law.

Sect. 4.

This Action will lye for a Serjeant or Barrister at Law, that doth practise in the Law with words in the Cases hereafter following, spoken of him with reference to his Profession, viz. He hath undone many. Osberton and Stanleys Case. Trin. 37. Eliz. Cam. Scaver.

For his dishonesty.

So for this (as some would have it) Go not to him, for he will deceive you, Hetleys Rep. 70. Yet see the contrary by March. pl. 217. Brownl. 1. part 11.

So for this, He hath been the cause of the overthrow of 100. men, by his subtil means, Yelverton Rep. 143. March. 8.

So for this, You are a dishonest man in your Profession, Trin. 37. Eliz.

So

So for this, You are a paultrie Lawyer, and uſe to play on both hands. Croo. 2. 267. So for this, He is a paultrie fellow, for he doth deal on both ſides, and deceive them that put him in truſt. Noys Rep. 11.

So for this, He hath done falſly with me being his Clyent, and hath joyned with mine Adverſary, Stiles Rep. 231. 283.

So for this, He is a Bribing knave, and hath twenty pound of J. S. to cozen me. Brownl. and Goldsb. 6. Bribing Knave.

So for this, Go you to him to be of your Counſel, he will deceive you, he was of Counſel with me, and revealed the ſecrets of my Cauſe. Trin. 13. Eliz. B. R. Coo. Lib. Entries. 22.

So for this alone, He being of my Counſel, revealed the ſecrets of my Cauſe.

So for this, He revealed the ſecrets of his Clyents Cauſe.

So for this, You did diſcloſe my Counſel to mine Adverſary. Snags Caſe. Trin. 13. Eliz. B. R. So for this, Thou didſt diſcloſe my Counſel, See Croo. 1. part laſt publiſht. 358.

So for this, Thou didſt deliver my Evidence to mine Adverſary, ſee there for it.

So for this, He giveth bad Counſel.

So for this, You are a cozening Knave, and ſhewed a counterfeit or forged Deed, knowing it to be ſo. Mich. 39, 40. Eliz. Cozening Knave.

So for this, You are a bribing Knave, or a corrupted Knave, or you are a corrupt man, or you are a common Barretor, or you are a common Champertor, or you are a common maintainer of Suits. Hobb. Rep. Barretor. Champertor. Maintainer of Suits.

Rep. pl. 17. 177. 188. 145. Brownl. and Goldsb. 11.

For his unskilfulness.

So this Action will lye for such a man for this, He a Barrister? he is a Barretor and no Barrister, he was put from the Bar, &c. and durst not shew himself there, he hath as much wit as a Daw. Coo. 13. 71. Godb. Rep. 44. Hetleys Rep. 71. Noys Rep. 98.

So for this, Thou hast no more Law than a Monkey; or, thou hast no more Law than a Jackanapes, or thou hast no more Law than a Jack-Daw. Hetleys Rep. 71. Owens Rep. 17. Godb. Rep. 441. Nor for this, He hath as much Law as a Monkey, &c. March. Rep. pl. 93. Goldsb. 126. pl. 17. Croo. 13. 71. Mich. 36. 37. Eliz. Palmers Case B. R. Hetleys Rep. 71.

× So for this, You a Counsellor, a Fool, an Ass, a Hangman, a Counsellor at Law, a Fool in the Profession. Popham. Rep. 207. So for this, He is a Dunce, and will get little by the Law. Croo. 1. part 277. So for this, He is an Ignorant man in the Law. So for this, He hath no skill in the Law. So for this, He is the simplest Lawer towards the Law. 39, 40. Eliz. B. R. So for this, He is no Lawyer.

So for this, He a Counsellor, he is a concealer of the Law. Coxes Case. Trin. 2. Jac. B. R.

+ And yet it is held, the Action will not lye for these words, He is no Schollar, or thou wast never any Schollar, or thou art an ignorant man in general, without reference to his Office. Or for this, He is an Ass. Cawdreys Case.

× And yet it is said by some to have been adjudged

ad judged actionable to say of such a man, He is an ignorant man. Trin. 17. Car. 1. B. R. Sandersons Case. But without question it will lye for saying of such a man, he is an ignorant man in the Law.

But it will not lye for this, to say he hath no more Law than J. S. and J. S. is no Lawyer.

But it was said by Tanfield Judge, it may lye for saying of such a man, Hee hath the falling Sickness. For other Cases.

So it may lye for saying, hee giveth bad counsel. Croo. 1. part last publisht 403.

It will not lye for saying of a Lawyer, and Judge. Judge of a Corporation Court Hee is a Puritan knave, a Precise knave, a Bribing knave, and I will make him answer for what he hath done. Popham. Rep. 139.

Nor for this, You have lost your Clyents cause. Hetlyes Rep. 70.

Nor for this, you have sued a counterfeit, [or a forged] Deed, Mic. 39, 40. Eliz.

Nor for this, He mis-enters the name of his Clyent in his Book. Croo. 1. part last publisht 403.

Nor for this, Hee is a Drunkard, or a Drunken fellow.

Nor for this, Thou hast nothing, but what thou hast gotten by swearing, and forswearing. New book of entries 22.

Nor for this, Hee is a Bankrupt. March Rep. 8.32.

But these things must bee added for the understanding of all these Cases also: Sect. 5

1. That hée that brings an Action for such words as these, must set forth, that hée was a Lawyer at the time of the speaking of the words.

2. That in this Case, where the words are in themselves Actionable, there need not be any Averment of any special loss by the speaking of them; but if in truth the Case be so, it is best so to set it forth.

3. That for some of the words herein, set forth to be Unactionable, if the party of whom they are spoken, have any special damage by them, there perhaps an Action may lye for some of these words.

4. That such kind of words as these, are to be regulated by the same general Rules of other Slanderous words, that is, they must be false, malicious, certain, and not lyable to qualification by other words spoken with them, and the like, or they will not be Actionable.

Of a Sheriff. Extortioner.

It is said that this Action will lye for saying of a Sheriff, He is an Extortioner, or that he hath by colour of his office extorted twenty shillings above his due Fees.

But it will not lye for saying, to the servant of the present Sheriff, of the last years Sheriff, Your Master must not look to have such hudling and shufling of matters this year, as he had the last year. Croo. 1. part last publisht 849.

Cozening.

Nor against an under-Sheriff for this, Thou art a cozening fellow, as any in the Country, the last time thou wert Under-Sheriff, as now thou

thou art: thou didſt ſerve an Execution for a Neighbour of mine, and didſt keep the mony in thy hands. Croo. 1. part laſt publiſht 854.

This Action will lye alſo for a Preacher, a Parſon of a Church, for theſe words ſaid of him, He hath made a Seditious Sermon, and moved the people to Sedition this day. Coo. 4. 19. Paſche. 24. Eliz. B. R. Phillips verſus Badby. Of a Preacher, or a Parſon of a Church. Sedition.

So it is ſaid it will lye for him, for theſe words, He hath had two children by A. the wife of B. and I will cauſe him to be deprived for it. Parrets Caſe 38. 39. Eliz. Noys Rep. 64. Croo. 1. part laſt publiſht 502. Incontinency.

And yet it is held, that it will not lye for this, ſaid of him, He is an Adulterer. **Nor for this,** He is a Whore-maſter. **Nor for this,** He is a Drunkard. **Nor for this,** He is a common Swearer. **Nor for this,** He is a Preacher of falſe Doctrine. Stiles Rep. 49. Drunkard. Swearer. Preach falſe Doctrine.

And yet in Hill. 1650. B. R. in the Caſe of Drake: **the Court did incline to give an Action for theſe words, for ſaying of a Preacher, a Maſter of Arts, and an incumbent of a ſpiritual living,** Thou haſt Preached lyes in the Pulpit. Stiles Rep. 363. 364.

And if a Preacher have any ſpecial damage by any ſuch like words ſpoken againſt him, in that Caſe doubtleſs he may have this Action for his remedy.

To ſay of a School-maſter, Put not your Son to him, for he will come away as very a dunce as he went, **this Action will lye.** Hetleys Rep. 71. Of a School-Maſter.

Of a Clerk of Assises. Bribing.

This Action will lye also for a Clerk of Assizes, for saying of him, Hee hath taken a Bribe of forty shillings, Yelvertons Rep. 142, 143.

Of a Coroner. Extortioner.

This Action will lye for saying of a Coroner, Hee is an Extortioner, and hath, colore officii, Extorted forty shillings.

Cozener.

But to say of such a one, Hee is a cozening knave, and hath cozened I. S. of his Land, **is not Actionable.** See March. 2 part of Slanders 4.

Of a Town-Clark.

This Action will lye for a Town Clerk, that is an Attorney, and a Judge in the Mayors Court, for saying of him Hee took forty shillings for a Bribe Godb. Rep. pl. 211.

Bribing.

But not for this, Thou hast made many false certificates, for the Mayor and Burgesses in that Court, and the more thou stirrest, the more it will stink. **For that no speech was about his office, when the words were spoken, nor didit appear that the making of the Certificates did belong to his office, nor was it averred that hee knew them to be false**, Huttons Rep. 123.

Averment.

Maintainer of Suits.

Nor for this, Hee is a common maintainer of Suits, and the Plague of God consume him; I hope to see his body rot upon the earth, like the carcass of a Dog, and I will have him thrown over the Bar the next Term, and I will give a Beech to hang him. Brownl. and Goldsb. 15.

Of the King of Arms.

It will lye for any Deputy of such officer as the King of Arms, that hath a Patent for his office, and power by commission to make a Deputy to inquire of matters about his office, when

when hee hath done it; to ſay of his Deputy: He came and ſate by force of a forged Commiſſion, and hee is a Scrivener and no Herauld. Croo. 1. laſt publiſht 329. Forgery.

This Action would have lyen for a receiver of the Court of Wards, upon theſe words, Mr. Deceiver hath deceived and cozened the King, and dealt falſly with him. Sir Miles Fleetwoods Caſe. Of a receiver or auditor of the Court of Wards. Sect. 6. Cozening.

So to have ſaid of an Auditor, Hee was a frauditor, and had deceived and cozened the King. Hobb. Rep. 375. So to have ſaid this, You have received money for the Ingroſſing of Fœdaries, and I will prove that to bee cozening; and you are a cozener and live by cozening. Winches. Rep. 40.

This action will lye for ſaying to a Steward of a Court, That he hath been the cauſe of the overthrow of a hundred men by his ſubtil means. Yelvertons Rep. 142, 143. So for this, Hee hath taken a bribe of forty ſhillings. Yelvertons Rep. 142. Of a Steward of a Court: Taken Bribes

But it will not lye for ſaying of a Steward to a great man of his Courts, and one that hath been much truſted by him, Hee is a notorious lyar and couzener, and hath deceived the Pariſhioners of H. of five hundred pound, and I will teach him to cozen me of my houſe. Croo. 2. 619. Couzener.

This Action will lye, for ſaying of a Steward of a Court Leet, and Court Baron, Mr. Carve hath put a Preſentment into the Juries Verdict againſt me of three ſhillings four pence, for ſuing of Peter Weſtforth of the Forgery.

Court, without the consent of the Jeury. M. 4. Jac. B. R. Carves Case.

Of an Arbitrator.

But this Action will not lye for an Arbitrator, chosen by consent to end a matter of difference between men, That he is a corrupt man, or that he dealt corruptly in the making of such an award, or the like, by Williams Justice. **But such words spoken to a Judge or Justice of Peace, will give an Action of an Action.**

Of an Attorny.

This Action will lye for an Attorney, or Clerk of the Court, or such like Officer, for saying of him at large, or in relation to his office, the words in the Cases hereafter following (that is to say) For this, He is a bribing Knave. Hobb. Rep. pl. 17. Coo. 4. 16.

For corruption and dishonesty.

So for this, He hath taken a bribe of forty shillings. Yelverton Rep. 143. 412. Hobb. pl. 17. Golsdb. 6.

Bribing.

So for this, He is a bribing Knave, and hath taken twenty pound of A. to cozen me.

So for this, His credit is fallen, he dealeth on both sides. Noys Rep. 10. Mich. 41. 42. Eliz. Co. B. Kings Case.

Sect. 7.

So for this, He is an Ambodexter. Godb. Rep. 214. Finches Law. 186.

So for this, He hath taken mony on both sides in Suits.

So for this, He takes mony on both hands in Suits.

So for this, He took mony on both sides in a Cause between him and me. M. 2. Jac. Dawtreys Case. B. R.

So

So for this, He is a good Attorney, but he will play on both ſides. Brown. 1. part Croo. 1. part 166.

So for this, He is a paultry fellow, his credit doth begin to crack, he doth deal on both ſides, and deceive many that truſt him. **But for the laſt words only**, he doth deal, &c. **is the Action grounded.** Croo. 1. part laſt publiſht. 914. Noys Rep. 11.

So for this, in the North, He is a Daffidowndilly, **which there is an** Ambodexter. Hetleys Rep. 123.

So for this, Take heed and follow him well, for he will make you throw your purſe over your boſome. Winchel. Rep. 40.

So for this, He is a baſe Raſcal, and I ſay, I will make him to loſe his ears, and I will teach him, or any Lawyer of them all, to have a Writ ſerved on me. Leys Rep. 170. 176.

So for this, He hath been the cauſe of the overthrow of a hundred men by his ſubtil means. Yelvertons Rep. 142. 143.

So for this, He is a falſe practiſer. Paſche. 17. Jac. Moores Caſe. **So (as ſome ſay) for this**, He is a falſe Attorney. **So for this**, He is a courzening Attorney. Hetleys Rep. 140. 141.

So for this, You are a diſhoneſt man in your profeſſion. Noys Rep. 11. 7.

So for this, Thou didſt diſcloſe thy Clients Counſel to his Adverſary. Trin. 17. Jac. Andersons Caſe.

So for this, He revealed the ſecrets of my Cauſe. **So for this**, He did deliver my

Evidence to my Adversary So for this, He did disclose my Counsel. Croo. 1. part last publisht. 158.

So for this, You are well known to be a corrupt man, and to deal corruptly. But in this case the words must have reference to his Calling, for if they were occasioned by speech about him as a Usurer, or about an Executorship, and his ill dealing therein, no Action will lye for such words. Coo. 4. 14. Finches Law. 186. Godb. 214 Croo. 1. part 196.

Forgery. It is said, it will not lye for this, Hee is a forger of Writings, and deserveth to lose his ears. Nor for this, Hee is a forger of Writings, by which he hath couzened fatherless children. Winches. Rep. 90 91. Quere of these Cases. For they import a very foul charge. But it is said, it will lye for this, Thou hast forged the Will of J. S. Huttons Rep. 29. And yet doubted whether it will lye for this, Thou hast forged Writings, for which thou shouldest lose thy ears. Bulstr. 3. part. 265.

So for this, Hee hath forged a Sheriffs Warrant, shewing what it was. Browl. Rep. 4.

But it will not lye for this, Hee made false Writings. Winches. Rep. 40.

Nor for this, You were cooped up for forging of Writs.

Couzening. Nor for this, He gets his living by false writs Croo. 1. part 195. For this Quere. But this Action will lye for this; If a Suit be betwæn A. and B. and B. say to A. Your Attorney

ney is a Bribing Knave, and hath twenty pound of you to couzen me. Mich. 1. Jac. B. R. Yardlies Caſe.

So for this, Thou didſt couzen J. S. of his fee, and I will Sue thee for it in the Star-Chamber. Brownl. 1. part 2. 3. 6. 7. part 2. 253.

So for this, He is a couzener, and couzens his Clients in the Sheriffs Court at London, where hee is an Attorney, and was for that cauſe diſcharged of that Court. Croo. 1. 190. 192.

So for this, Thou art a falſe Couzening Knave, and haſt gotten all that thou haſt by couzenage, and thou haſt couzened all thoſe that have dealt with thee, Croo. 2. 586.

So for this, Hee is a baſe Rogue, and cheating Knave, and doth maintain himſelf, his wife and Children by cheating. Croo. 1. 171.

So for this, Hee is a couzener, and hath couzened me of twenty ſhillings. Hetlyes Rep. 123.

So for this, Thou art a couzener, and haſt delivered couzening Bills, Hetlyes. Rep. 123.

But it will not lye for ſaying, Hee is a cheater. Hetleys Rep. 139. Croo. 1. 139. Cheater.

It will lye alſo for this, Thou art a couzening Knave, and getteſt thy living by extortion, and didſt couzen one Pigeon in a Bill of coſts of ten pound. **But for the laſt words only, and not for the firſt words.** Croo. 1. part laſt publiſht. 601. 602. Sect. 8.

It

It will not lye for this, ſpoken to one that is ſpeaking of retaining him, Go not to him, for he will couzen you. Paſche. 18. Jac. Ratcleifs Caſe. Croo. 1. 29.

Words of qualification.

Nor for this, will it lye (as it is ſaid) Thou art a falſe couzening Knave, and haſt couzened my two Kinſmen of their Land, and deſerveſt the Pillory. 26. Eliz. B. R.

Nor for this, He couzened J. S. out of his Land. **Nor for this,** Thou haſt cozened J. S. of his fee, and I will ſue thee for it in the Star-Chamber. Brownl. 1. part. 3. 5. 6. 16. 2. part. 253.

And it is ſaid, it hath been doubted whether it will lye for this, He is a baſe, cheating, couzening Knave, and hath cheated me as never man was cheated. Croo. 1. 112. 367. **But theſe words ſeem to others clearly to be Actionable.**

Champertor. Barretor. Extortioner. Maintainer of Suits.

So it will lye alſo for this, He is a Champertor. Hobb. Rep. 117. 359. pl. 145. 351. Coo. 4. 16. Brownl. Rep. 17. Winchef. Rep. 481.

So for this, He is a common Champertor, and I will have him turned over the Bar. Hobb. Rep. 183.

So for this, He is an Extortioner. Hill. 40. Eliz. B. R.

So for this, He is a common Barretor. Brownl. and Goldsb. 11. Winchef. Rep. 166. Huttons Rep. 104. Croo. 1. 139. 406 Hobb. Rep. pl. 188. **But it will not lye for ſaying of him,** He is a common Maintainer of Suits. Hobb. Rep. pl. 145. Winch. Rep. 40.

So

So it will lye for saying of him, He is a forging Knave. Brownl. 1. part 16. Hetleys Rep. 140. Forgery.

So also it will lye for this, He is a suborning Knave, or he is a suborned Knave. So for this, He is a perjured Knave. Stiles Rep. 17. Paines Case.

So for this, He is an extorting Knave, and did suborn one to be forsworn before the Lord Chief Justice. 20. Jac. Subornation of Perjury.

So for this, Take heed of him, for he is the falsest Knave in England, and he will cut your throat. Hetleys Rep. 140.

And so it will lye for calling of him Knave only, as hath been adjudged after a Writ of Errour brought. Nichols Case. Stiles Regist. 8. 17. Trin. 12. Car. 1. B. R. Yardlies Case 18. Eliz. 2. B. R. And therefore a fortiori it must lye for saying, he is a couzening, or a forging Knave, or the like. Yet see the whole Court. Co. B. against it. Croo. 1. last publisht. 601. Knave.

So for this, He is a common stirrer up of Suits, and a disturber of the Peace, and so a mover of unjust Actions. Hetleys Rep. 140.

So for this, Thou art a Knave, and stirrest up Suits between parties to their undoing, and 'tis pity such persons go unhanged. Croo. 1. 166.

So for this, said to a Client of the Attorney, I marvel you will imploy such a Knave as Nichols is, you will have but disgrace and discredit by imployment of him, for he is a pro-

proclaimed Knave in the Market. Croo. 1. part 331. 333.

So for this, Hee is a baſe Raſcal, and I will make him to loſe his ears. Leys Rep. 70.

Sect. 9.

Cheater. Viper. Villain. Judas. Brabler. Swaggerer.

But it will not lye for ſaying this, of an Attorney, or ſuch like Officer, Hee is a Cheater, a Judas, a Deſtroyer, a Viper, a Villain, a common Brabler, a common Breaker of the Peace, and a Swaggerer, altogether or aſunder. But if an Actionable word be joyned with them, theſe will aggravate the ſlander, and ſo the damages. Hetlyes Rep. 140 139. 143. Huttons Rep. 104. Winchel. Rep. 166.

Nor for this, I think thou art no Attorney, but an Attorneys Clerk, and if thou be, I ſhall have thee pickt over the Bar the next Term, and thy ears nailed to the Pillory. Hobb. Rep. pl. 159.

Uſurer.

Nor will it lye for this, Thou art a Uſurer. Nor for this, Thou haſt played the Knave with me about a Will. Coo. 4. 16.

Recuſant.

Nor for this, Hee is a Recuſant. Hetleyes Rep. 140, 141.

Nor for this, Thou art a flagging Jack, and a Couzener, and wouldſt have couzened mee. Hetlyes Rep. 140.

Forgery.

Nor for this, I have matter enough againſt him, for M. H. hath found Forgery againſt him, and I can prove it againſt him. Hobb. Rep. 189. 395.

Incertainty.

Nor for this, ſpoken to an Attorneys Son, My Father was not caſt over the Bar as thy father

father was. Knightlies Caſe. Trin. 41, Eliz. B. R. Hobb. pl. 145.

Nor for this, Thou getteſt thy living by extortion. **Nor for this**, Thou getteſt thy living by ſwearing and forſwearing, Croo. 1. laſt publiſht 603. Extortion.

Nor for this, I will have him thrown over the Barre the next Term. Hobb. Rep. 159. Box and Barnabies Caſe.

Nor for this, Hee was, or will be picked over the Barre. **And yet it is ſaid to lye for this**, Hee was picked over the Barre.

This Action will lye alſo for an Attorney, or ſuch like kind of Officer, for theſe words, viz. Thou art the ſimpleſt Attorney towards the Law. Mich. 39. 40. Eliz. B. R. Martins Caſe. For lack of skill.

So for this, Hee is the fooliſheſt Attorney towards the Law, and if he doth not overthrow your Cauſe I will give you my ears; Hee is a Fool and an Aſſe, and ſo I will prove him. Croo. 1. part laſt publiſht 589. Goldsb Rep. 128. Hobb. Rep. pl. 117. of an Attorney

So for this, Thou haſt no skill in thy Office. **But it will not lye for ſaying of him**, That he hath no skill in Husbandry, or the like.

But it is ſaid, that it hath been doubted whether an Action will lye for theſe words, ſaid of an Attorney, Hee is a Knave, and a couzening Knave, and did take fees on both hands in a Suit between me and Green, and by knavery ſuffered me to be condemned at Ipſwich at Greens Suit wilfully, being Attorney for me. See March of Slanders, 1. part 78. of an Attorney

But

But this Case seems to others to be out of doubt Actionable.

Dishonest Attorney

So it is said by some, that it will not lye for these words, Thou art the dishonestest Attorney in England, and if any be more dishonest than thou, he deserves to be hanged, unless the words be spoken with reference to his office, or practise, and unless there be an Averment made, that there is a dishonest Attorney in England. Croo. 1. 29.

Averment?

And this also is here to be added:

1. That where the words in the Cases before named be Actionable, there will be no need of any special averment of loss.

Averment?

2. That where the words be not Actionable in themselves, yet if the party, of whom they are spoken have any special loss by them, they may perhaps be Actionable.

3. These kinds of slanderous words are to be subject to the Rules laid down in other Cases for other Actionable words, they must be certain, false, malicious, and not subject to qualification, &c. For if the words be true, or not malicious, nor subject to qualification by other words, they may not be Actionable.

4. The Attorney (it seems) is to shew in his Suit, that he was an Attorney at the time of the speaking of the words.

Of a Constable. Sect. 10.

This Action will lye for saying of a Constable, He is a concealer of Felons. Pridhams Case. Pasche. 7. Jac. B. R.

So for this, Thou hidest [or coverest] Felonies. So for this, Thou favourest Felons. Stuckleys Case, Pasche. 7 Jac. B. R. and Bondmans Case.

But

But it is doubted whether it will lye for this; said of such an Officer, Thou art a bribing Knave, and hast couzened the Parish of W. in Rates of thirty pound. Hetleys Rep. 36. Cozening.

This Action will lye for over-seers of the poor of a Parish, for these words said of them, viz. of any such Officer, He hath couzened the poor of their bread. March. Rep. pl. 135. 9. Jac. B. R. but some deny this Case, to be Law, but the words have a verbal sound. Of Over-seers of the poor.

So for this spoken in relation to his Office, That he is a cheating Knave, and hath couzened the Parish of forty pound. Stiles Rep. 388. Cozening.

So it is said to lye for this, Thou dost make Loanes, Taxes, or Assessments thy self, and makest five quarters in the year, and dost cheat and couzen the Parish. Stiles Rep. 394.

Some say it will lye against such an Officer for these words, He hath Couzened the poor of their money, others deny it, but certainly they have the import of a foul aspertion in them. 9. Jac. B. R.

It will not lye for saying of such a one, He is a notorious Lyer and Couzener, and hath deceived the Parishioners of H. of five hundred pound, and I will teach him to deceive me of my house. Croo. 2.619.

It is said this Action will lye for saying of the Churchwardens of a Parish, such like words as these, of one of them, He hath couzened the poor of their Bread; or he hath couzened the poor of their Money. But others oppose this, 9. Jac. B. R. Of Churchwardens.

It

It seems it will lye for this, spoken of such an Officer in relation to his Office, That he is a cheating Knave, and hath couzened the Parish of forty pound. Stiles Rep. 388. 394.

But it will not lye for saying of such an Officer, Hee is a notorious Lyer and couzener, and hath deceived the Parishoners of A of five hundred pound, and I will teach him to couzen me of my house. Croo 2. 619.

This Action will lye for a Churchwarden, for this said of him that had made his presentment at a Visitation, thou hast perjuredly presented at me the Visitation before I. S, official. Croo. 2 80, 81. 220.

For a Scrivener. Rogue. Couzener. Cut-purse.

It will not lye for these words spoken of a Scrivener, Thou art a Rogue, and a Conycatching Rogue, a couzening Rogue, a Cut-purse. Croo. 2. 536.

Nor for this, Hee made false writings. Croo. 2. 536.

Of a Measurer or surveyor of Land.

This Action will lye for a Mathematical Measurer or Surveyor of Land, a Geometrician, or a Mathematician for any words spoken of him to scandalize him in his Art, Faculty or Profession, as to say of him, He hath no skill in his Trade, or that he is a Cheater in his Trade, or that he is a Couzener in his Trade, or that he is a cheating Knave, and that I can prove. But this must be for a man that is learned, and doth his work by his Art, for if the words be spoken of one that doth measure by the poll only, it seems they are not Actionable. Goldsb. Rep. 278. Hill. 16. Jac. B. R. Londons Case Croo. 2, 504. It will

Cheater.

lye

lye also for a Surveyor or measurer of Land, that gets his living by it, for these words said of him, Thou art a couzening and shifting Knave, and a cheating knave. Croo. 2. 504.

This Action will lye for saying of a Commissioner, that hath a Commission to examine Witnesses, and to hear and determine a matter in Chancery, That he is a corrupt man, or that he hath taken bribes of R. K. and for saying after, King hath set Sir George Moore on horse-back with bribes, whereby to defraud Equity, Justice, and good conscience; and Popham took no difference to bee, where the Commission is to one, and where to manys and where the Commissioners bee named by the Court, and where by the Parties, or either of them, Sir George Moore, and Fosters Case. So likewise for Commissioners that have a Commission to examine witnesses out of the Exchequer. Of a Commissioner. Sect. 11.

And it is adjudged to lye for this said of a Commissioner, that had a Commission out of the Exchequer to examine Witnesses, That he had returned as the Depositions of Witnesses into the Exchequer, the Examination of divers who were never sworn. Croo. 1. part last publisht. 623.

This Action will not lye for the Mayor of a Town, for saying of him, That he hath couzened all the Town. 8 Car. B. R. Mayor of Tivertons Case. Of the Mayor of a Town.

This Action will lye for a publick Weigher in a Market, Fair, or Town, that is a publick Officer there, for these words. That he Of a publick Weigher in a Town.

hath done corruptly; or that he hath taken bribes to make false Weights, or the like, by Williams Justice.

Of a Bayliff. This Action will not lye, for saying of a Bayliff, That hee had made no true Accompt. Bulstr. 2. 218.

Of a Clerk of a Company. This Action will lye, for saying of A. B. Clerk to the Company of Merchant-Taylors in London, these words, Before A. B. came to the service of the Merchant-Tailors, hee dwelt in Shrewsbury, and set the Town together by the ears, and so long as hee was there, they were never in quiet, but afterwards they lived quietly, and he being Clerk to the Merchant-Tailors, was of consent and counsel with W. G. to deliver the Books of the Corporation which hee had in his keeping, to the intent that thereby some of the Lands of the same Corporation might be found concealed. Croo. 1. part last publisht. 358.

Couzening. Incertainty. But if one shall say of another (that is an Officer) without any precedent Communication about his Office, Place, Trust, or Profession, That hee is a couzening and cheating Knave; or that he hath couzened and cheated any man thus, and thus; this is so general and incertain, that no Action will lye for it. March. of Slanders. 1. part 72. 73.

Out of all which Cases touching Officers, and such like persons imployed as in the Cases before, That hee that will charge a man for words spoken against another, for any thing tending to defame him in his office or place of Trust, these things must be in the Case: 1. The

1. The words must be spoken of him generally, and then will be by construction of Law intendible, as spoken to, or of him in relation to it, or they must be spoken with expresse reference to his office, or place, and imployment; for if they be spoken occasionally, about another subject, they may not be actionable.

2. The Plaintiff that sues, must set forth that hee was such an Officer at the time of the words spoken, or otherwise regularly the Action will not lye; for it will not be sufficient to say, that hee had been such an Officer, &c. But it is not needful for him to say, that the hearers of the words did at that time know him to be such an Officer.

3. The words must be subject to the generall Rules of all other actionable words; they must be certain, false, malicious, &c. And yet if they fail to be actionable by any of these defects, if they occasion any special damage to him, of whom they are spoken; they may be actionable, albeit they be not so of themselves.

4. It is said, that in Actions for Slander, of this nature, that there must be a special Averment of some damage by the words, and that otherwise they will not be actionable: But it seems, the Law, and common practise is otherwise; and it shall be presumed to be a losse, and therefore need not to be averred. Howbeit, it is doubtlesse the sure and safe way (if the Case will bear it) to alledge a particular damage, and it is usual so to do, for

increase of damages. March. 59.

5 That the same actionable words, when spoken of a man in Office and Trust, &c. spoken of another man out of this Office, or place of Trust, or of a man in Office, without any reference to it, may not be actionable. Hobb. Rep. pl. 35. 93. 104. 351. Croo. 1. part 97. Bulstr. 1. part 36.

CHAP. XXI.

Of Scandalous Words that relate to men in their Trade, and Way of Living.

Sect. 1.

THere are other scandalous words, that have reference to men in their way of Trade, and that whereby they get their livelihood. And this lyeth especially in three things.

1 When any thing shall be said of them to disparage their credit, as to their estate, as when they shall be said to be Bankrupts, or the like.

2 When any thing is be said against their honesty, and Justice in their Trading, as when they shall be said to cheat in things, or in weight, or measure in their buying, and selling.

3 When any thing shall be said to disparage their skill in their Trade. But it may be in some other particulars, and wherein soever it is, that any man is damnified by such talk, he must have his remedy by this Action.

X 1 To disparage the estate.

It is thereforе agreed, that this Action will lye,

lye, for saying of a Merchant, Mercer, Grocer, Shoomaker, Dyer, Weaver, one that doth buy and sell Woll by Retail, a Grasier, one that doth trade for Lead in any County, and gets a living by it, a Corn-Master, or Baker in London, a Country Farmer, that doth buy and sell, and live by it, a Millener in London. Or to say of any other Tradesman that liveth by buying and selling at present, or did so very lately, and doth so usually. To say of any such kind of man, That he is a Bankrupt. Noys Rep. 158. Huttons Rep. 49. Bulstr. 1. part 267. Coo. 4. 19. Stiles Rep. 75. Croo. 1. part last publisht. 268. Bankrupt.

Or, Hee is a Bankrupt Knave. Bulstr. 2. part 210. Dyer 72. Croo. 1. part last publisht. 911. Bulstr. 1. part 110. And yet some have doubted of this. Hutton. Rep. 13. 14.

Or, He is a Bankrupt Rogue. Godb. Rep. 152. Croo. 1. 21. Huttons Rep. 52.

Or, hee is a Bankrupt Scrub. Stiles Rep. 75.

Or, hee is a Bankrupt Slave. Croo. 2. 58. Popham. 184. Hutton. 13. 14. March. of Slanders. 2. part 2.

Or, hee will be a Bankrupt within two daies. Dyer. 72. Coo. 4. 19.

And yet it is said, it will not lye for these words spoken to a Tradesman, Thou art a Bankrupt Knave, or a Bankrupt Rogue, where they have relation to something else besides his Trade. Stiles Rep. 420.

So it is said, that this Action will lye for this, Hee is a Bankruptly Knave, and cannot

be truſted in London for a Groat. Godb. Rep. 151. But for calling of one Bankruptly Knave alone, this is doubted Croo. 2. 345. 578.

So it will lye for this, I will prove that hee hath been Bankrupt, and hath agreed with his Creditors for a Noble in the pound, and I will prove it. Hill. 3. Jac. B. R. Edmonds Caſe.

So for this, I will prove thee a Bankrupt.

So for this, I ſhall prove the a Bankrupt by ſuch a time. Croo. 1. 193.

So for this, He is gone, and dares not ſhew himſelf for Debt, and hee is a Bankrupt for ought that I know. Stiles Rep. 130.

So for this, He is a Bankrupt, and fled beyond the Sea for mony. Trin. 9. Jac. B. R. Trulocks Caſe.

So for this, He is not worth a Groat, he is a hundred pound worſe than nought. Croo. 1. 193. 231. Huttons Rep. 125. Bulſtr. 2. part 267. Croo. 2. 578. yet this is doubted by ſome. See afterwards.

So for this, Hee came a broken Merchant from Dale.

But it will not lye for ſaying, He was a poor man within this ſeven years, for he may be ſufficient now, notwithſtanding this. Croo. 1. 123.

Sect. 2. So it will lye for this, He is a Bankrupt, and not able to pay his Debts, but will run the Country. Huttons Rep. 46.

So for this, He is a Bankrupt, and I will drive him out of the Country.

So

So for this, What art thou? a Bankrupt and wast a Bankrupt. Croo. 1. part last publisht. 273.

So for this, Thou dost owe more than thou art worth, and art not able to pay thy Debts. Stiles Rep. 213.

So for this said of a Merchant, or the like. He is broken. Hill. 17. Jac. B. R. Johnsons Case,

So for this, He is a poor fellow, and not able to pay eleven shillings in the pound, and not able to pay his debts. Stiles Rep. 273.

So for this, Thou art a base beggerly Rogue; and not able to pay thy debts. Stiles Rep. 217.

So to say of such a one as doth merchandize for Lead in any County, and get his living by it, He is a Bankrupt, and beggerly Gentleman, Bulstr. 1. part 41. Huttons Rep. 40.

So for this, said to a Corn-Master and Baker in London, Thou art a broken fellow, & hast cheated me of two hundred pound. Stiles Rep. 429.

So for this, said of a Farmer in the Country, that doth buy and sell, and get his living by it, You are a begger and bankruptly fellow, and if every one had his own, you are not worth a groat; with an Averment, that thereupon his Landlord turned him out of his bargain, or he had any special losse.

So for this, said of a Millener in London, Thou art in a breaking and decayed condition, and I will prove it; and if you question me, I will prove it to your disgrace. Stiles Rep. 425.

So for this, said of a Merchant, that is to have a Trial at Guildhall, He is broken [Innuendo he is not able to pay for the wares he bought] and I warrant you he dares not be at the Trial at Guildhall. Croo. 2. 562.

So for this, said of a Merchant, Thou art a Rogue, and a beggerly fellow, and I shall prove thee a Bankrupt before the next Term. Croo. 1. 171.

So for this, said of a Grocer, He is a beggerly fellow, and not able to pay his debts. Croo. 1. 339. Croo. 1. last publisht. 643.

And yet it is said, it will not lye for this, He is a base broken Rascall, and hath broken twice, and I will make him break the third time. But to say, he will break the third time, may be more dangerous. Noys Rep, 77. Bendloes Rep. 170.

Nor will this Action lye for saying of an Attorney, Farmer, or other man that is no Merchant, or other Tradesman, that lives by buying and selling, he is a Bankrupt. March. 8. Croo. 2. 424. Goldsb. 84. Finches Law. 186. Bulstr. 1. part 40. Jenk. Cent. 7. Case 70. Huttons Rep. 13. 14.

Nor for this, said of a Merchant, or Tradesman, Trust him not, for he will be thy undoing. Nor for this, said of a Tradesman, he is a beggerly fellow. Croo. 1. 171. Nor for this, I will sue out a Commission of Bankrupt against J. S. Nor for this, said to a Woollwinder in London, or elsewhere; Nor of a Tailor, or Fuller, he is a Bankrupt. Popham. 185.

Nor

Nor for this, Thou art an arrant Knave, for thou haſt couzened all Coventry. Bulſtr. 1. part 162. 163. Nor for this ſaid of a Merchant. Couzening.

This Action will lye for ſaying of a Shoemaker, He is a Bankrupt, and he did ſet forth, that he was a Shoemaker, and did uſe buying and ſelling of Leather. Croo. 1. part laſt publiſht. 208. Shoemaker

Nor for this, ſaid of a Merchant, Doth he hwe you money? get it quickly, and take heed how you truſt him. Croo. 1. part laſt publiſht. 541. Trin. 36. Eliz. Vaſpicks Caſe.

Nor will it lye (as it is ſaid) for this, ſaid of a Dyer, Thou art not worth a groat; Albeit he aver, that the ſpeech in the Countrey where it was ſpoken, be as much in the ſenſe thereof, there, as, thou art a Bankrupt. Paſche. 15. Car. B. R. Axe and Moodes Caſe. For his credit may be good, albeit he be worth nothing. And yet if a man have any ſpecial damage by ſuch words, with an Averment of it, he may maintain the Action. Yea, it ſeems there are ſome Judgements, that the words themſelves, Thou art not worth a groat, are actionable. See before, Croo. 1. 193. Dyer

If one be but a Merchants Apprentice, and he doth Merchandize for another man, and be called Bankrupt; or if one have been a Merchant, and hath given it over, and a man call him Bankrupt; in either of the Caſes the Action will not lye. And yet if in the laſt Caſe, he have reſumed his Trade again, and then be called ſo; in this Caſe the Action will

lye.

lye. Noys Rep. 33. Bulſtr. 1. part 267.

2 To diſparage his honeſty.

This Action will lye for ſaying of a Merchant, Mercer, Grocer, or any ſuch like Tradeſman, That he doth buy and ſell by falſe weights and meaſures, or by falſe weights or meaſures. But to charge another man ſo, that is no Tradeſman, is not actionable. Mich. 15. Car. 1. Co. B. March. Rep. pl. 119. 197. Hobb. Rep. 93. Paſche. 17. Car. 1. Pains Caſe.

Sect. 3.

falſe weights & meaſures

Nor to ſay of a Tradeſman, That he keepeth falſe weights and meaſures in his houſe, this is not actionable, for perhaps he doth never uſe them, nor know of them. March. Rep. pl. 197. Hill. 6. Eliz. Co. B.

Deceit.

And yet to ſay, He keeps falſe weights and meaſures, by which he doth couzen the Country, it ſeems, will be actionable. So it will lye for this, Thou doſt keep, and ſell by falſe weights, and in four and twenty ſhillings beſtowing, thy weights were falſe two ounces, and I will prove it. Brownl. 1. part 4. 5.

So it will lye for this, ſaid of a Merchant, He is a cheating Knave, and hath cheated his Father, by returning twenty pound for wares, &c. Croo. 1. 398. Stiles Rep. 123.

And yet it hath been ſaid to be reſolved not to lye for a Wheelwright, for theſe words ſaid to him, Thou art a Couzener, and haſt couzened me of a pair of Wheels. Hetleys Rep. 123.

Couzening.

This Action will lye for ſaying of a Goldſmith, and one that gets his living by buying and

and ſelling of Chains, and the like wares, Thou art a couzening Knave, for thou haſt ſold me a Saphyr for a Diamond. Croo. 3. 171. Hill. 32. Eliz. B. R. But it will not lye for ſaying theſe words of a Tailor, He is a couzening Knave, for he hath ſold me a Chain for Gold, that is but Copper, and he is a couxening Knave upon Record, and hath been impriſoned for couzening. Croo. 2, 171. March. of Slanders. 2. part 2.

So it will lye for this, for ſaying of a Farmer, that doth uſe to ſow his Land, and ſell the Corn upon it, and by this to maintain his family, he keeps a falſe buſhel, by which he doth couzen and cheat the poor, and that by this he loſt his cuſtome, &c. Paſche. 17. Car. 1. Co. B. March. Rep. pl. 192. Couzening.

To ſay of a Brewer, he maketh and ſelleth bad Beer, or of a Baker, he ſelleth naughty Bread, is actionable, if the partie of whom it is ſaid hath any loſſe by it. Mich. 15. Car. 1. B. R. Brewer. Baker

So to ſay of a Brewer, My Mare doth piſs as good Beer as he doth brew; this is ſaid to be actionable, if he ſuffer any loſſe by it. March. 60. Dykes Caſe. But otherwiſe not, for the words are inſenſible and impoſible, and therefore not actionable, but by reaſon of the eſpecial damage. Mich, 15. Car. 1. B. R.

Nor will this Action lye for theſe words, ſaid of a Merchant, He is a couzening Knave March. 8. 9. and yet if it be ſpoken with reference to his trade, it is queſtionable. Paſche. 15. Car. B. R. Couzening.

Nor

Nor for this, He came to D. with a blew Coat on his back; but hath now gotten much wealth by trading with Pirats, couzening in the trade of Pilchars, and by extortion, Bulſtr. 2. part 216.

Alderman & Mer. — For for this, ſaid of an Alderman and Merchant, He is a falſe Knave, and keepeth a falſe Debt-book, and chargeth me with the receipt of a peece of Velvet, which is falſe. Croo. 1. part laſt publiſht. 403. Hill. 37 Eliz. B. R. Brooks Caſe.

Sect. 4.

Servant to deceive his Maſter.

If I have a Bayliff on my Farm, that doth buy and ſell my Corn there, and by my ſervice herein he hath his livelihood, and any one ſhall charge him with any deceipt herein, whiles he is in the office and imployment, he may have this Action, but not after he is out of the imployment. Hobb. Rep. pl. 9. Winchel. Rep. 40. March Rep. 190. 197.

Servant.

This Action will lye for any ſervant that ſhall be by ſuch words charged to couzen or deceive his Maſter; as to ſay, A. doth defraud [cozen, or cheat] his Maſter, and will undoe him. If the ſervant have any ſpecial loſſe by it. Paſche. 15 Car. 1. B. R. March of Slanders. 1. part 99.

Inne-keeper, Alehouſe-keeper, &c.

This Action will lye for ſaying of an Inne-keeper, No man cometh to his houſe but he couzeneth him. Hetleys Rep. 123.

Couzening.

And yet it is ſaid to be adjudged not to lye for theſe words, ſpoken of a Butchers Wife, who doth uſe to ſell meat in her Husbands abſence, That ſhe is a couzening Woman, and hath couzened one of her Neighbours of four

pound

pound, and I will prove it. Huttons Rep. 14.

So for this, ſaid of a Co-partner in Trade, You are a couzening Knave, and did couzen me of one thouſand two hundred pound at one time, and that was in making an Accompt in the year one thouſand ſix hundred forty eight. Stiles Rep. 388.

So for this, ſaid of a Braſier, Thou haſt couzened me in a Pan. Stiles Rep. 364. Paſche. 7. Jac. B. R. And ſo by the ſame reaſon it ſeems it will lye againſt any man, that ſhall charge any other Tradeſman with couzening another in his Trade.

This Action will not lye for ſaying of a Merchant, He is a very Varlet, and ſeeks to ſuppreſſe his brothers will, he makes a ſhew of Religion, he is a very Hypocrite. Pophams Rep. 148. Varlet. Hypocrite.

Nor for this, Thou art a Cheater, and haſt cheated my husband of five hundred pounds. For the words doe not refer to his trade. Croo. 1. 301. Brownl. 1. part 4. 16. Cheater.

Nor for ſaying of any Tradeſman in London, Thou art a Cheater, and haſt cheated I. S. of five hundred pounds, unleſſe it be ſpoken of, and applied to a cheating in his Trade. Croo. 1. 101.

Nor for this ſaid of any Tradeſman, He hath deceived me in a reckoning for Wares, and his Debt-book which he keepth in his Shop is a falſe book, and I will make him aſhamed of his calling. Brownl. 4. Gold. Rep. 242. Deceit.

Nor for ſaying of a Merchant, He keeps a falſe Debt-book. Winchef. Rep. 40. Croo. 1. part

more keeps a falſe Debt Book

part last publisht. 403. But to say of him, He deceives men by buying and selling, may be actionable. Winchel. Rep. 40.

Nor will this Action lye for this, said to a Merchant, Trust him not, he will be thy undoing. Croo. 1. 171.

Nor for this, said of such a man, He is a Couzener. Croo. 2. 204.

This Action will lye for this, said of a Travel-man, to one that is about to place his Son with him, Put not your Son to him, for he will starve him to death. Hetleys Rep. 71.

of a Taylor he has cheated in his Trade

So for this, said of a Taylor, and free-man of a City, He hath cheated in his Trade. Irelands Case, Trin. 15 Car. 1. B. R. Hetleys Rep. 123.

3 To disparage the skill. Sect. 5.

This Action will lye for saying of some Travel-men They have no skill or understanding in their Trades, as to say of a Taylor, Carpenter, or such like travel-man, He hath no skill in his trade, it seemeth clearly to be actionable. But this said of a Mercer, or some such like Travel-man, that may use his trade by one that hath skill, may not be actionable.

So to say of a Baker, He knoweth not how to bake, or he doth not make good bread; or of a Brewer, He cannot, or doth not brew good Drink, and the like, this must needs be Actionable; so to say of such a Travel-man, He had no skill within this few years, may not be actionable, for he may have enough at this time. Croo. 1. 231.

If

If one ſhall ſay of an Inne-keeper, Victualing man, or ſuch like man or woman, that keepeth a common houſe, That he [or ſhe] hath in his, [or her] houſe, any great or infectious Diſeaſe, as the Plague, Pox, or the like, and thereby he or ſhe loſe their Guests, or ſuffer any ſpecial damage, they may have this Action, otherwiſe not; and yet it ſeems the Action is maintainable without Avermeot of any ſpecial loſſe. Coo. 4. 14. 17. Pophams Rep. 36.

4 Or otherwiſe to prejudice him of whom they are ſpoken, Inne-keeper, &c. Infectious diſeaſe. Averment.

So to ſay of ſuch a woman, Inne-keeper, &c. She is a pockey Drab, doth wear a Scarf to hide her blanches in her neck, it is a pockey houſhold; it ſeems is actionable. Trin. 9. Jac. Ludmans Caſe. Stiles Rep. 112. Hetleys Rep. 70.

But this Action will not lye for ſuch words ſpoken of another that is no Inne-keeper, That pockey Drab doth wear a Scarf about her neck to hide her blanches, I will not eat with her for ten pound. And yet if there be ſpeech of the French Pox, and therein the words be ſpoken, they may be the more dangerous.

So it will lye for this, ſaid of ſuch a man, He doth keep a Bawdy-houſe, Coo. 4. 14 17. Bulſtr. 1. part 138. 27 H. 8. 15.

Keep a Bawdy-houſe.

So to ſay of an Alehouſe-keeping Woman, Hang the Bawd, thou art worſe than a Bawd, thou keepeſt a houſe worſe than a Bawdy-houſe, and thou keepeſt a Whore in thy houſe to pull out my throat. Hughes Rep. 40.

So to ſay of an Inne-holder, That he hath buried

buried divers in his Garden, that dyed in his houſe of the Plague. Regiſt. orig. 173.

Barretor. **But this Action will not lye**, for ſaying of a Carrier, He is a common Barretor.

Varlet. **Nor for ſaying of a Cowper**, He is a Varlet, and a Knave, and a falſe knave. Hobb. Rep. pl. 188. Croo. 2. 104. 1. part laſt publiſht. 403.

Branded Rogue. **Nor for this**, Thou art a branded Rogue, and a Rogue by the Statute. Croo. 2. 204.

✗ Of a Phyſician or Chirurgion. **This Action will lye for ſaying of a Phyſitian in referente to his profeſſion**, He is a Mountebank, a baſe fellow, and an Emperike. Hughs Rep. 441. Paſche. 12. Car. B. R.

Sect. 6. **So for ſaying**, He hath no learning nor skill in Phyſick, 7. & 8. Car. B. R. **So for this**, He is a drunken fellow, a fool, and an aſſe, and was never a Scholar, nor able to ſpeak like a Scholar, is no Scholar, or hath no learning, in general without referring it to his office; **But if the words be ſpoken with reference to his office, they are the more unqueſtionably Actionable**, Croo. 1. 196. 197. Godb. Rep. 441. **So to ſay**. Go not to ſuch a one for Chyrurgery, for he hath no skill in Surgery. Hetleys Rep. 70.

So it ſeems to lye for this, ſpoken of a Chyrurgion, and of one Matthews he lately had in cure, Thou didſt kill Mr. Matthews, thou didſt kill him, **and if he ſay for lack of skill, then is the Caſe more clear.** Hetleys Rep. 69.

Of a Midwife. **But ſay of him**, He hath killed A. (now dead) with Phyſick, a Pill, and the Vomit was found

found in his mouth, and Doctor A. and Doctor B. found it; ſo, and it is true, is not Actionable, albeit it be averred the Doctors never found it ſo. Croo. 1. part laſt publiſht. 620.

This Action will lye for ſaying of a Midwife, Many have periſhed for her want of skill. Croo. 1. part 153.

So for this, Thou art a Witch, and wert the death of the child of I. S. at whoſe birth thou wert Midwife. Trin. 21 Jac. B. R.

And to all this, we have ſaid of theſe laſt kinde of Slanders, we muſt adde theſe things.

1 That he that brings an Action for this Slander, he muſt in his Action brought, ſet forth himſelf to be a Merchant, Mercer, Baker, or of ſome one Trade or other in certain; and it will not be ſufficient for him to ſay he was a Tradeſman in general, for no other man can have this Action, Stiles Rep. 420. 426. Sect. 7.

2 That he muſt ſet forth, that he is a common Tradeſman, as a common Baker, or the like, and not a Baker for a time only. Huttons Rep. 49.

3 That he muſt ſet forth, he was ſuch a Tradeſman at the time of the ſpeaking of the words; and yet a Declaration ſaying that the Plaintiff, fuit Mercator per Magnum tempus, not ſaying he was ſo at the time, was held good. Croo. 1. part laſt publiſht 273. Bulſtr. 1. part 36.

4 That a man may not juſtifie the calling of another Bankrupt, becauſe he was once a

Bankrupt, unless he be a Bankrupt at the time he calls him so. Croo. 2. 578. Coo. 4. 17. 18.

5 That the words be spoken with reference to the Trade, or that be general and relative words to the Trade, that must be so understood, as Bankrupt, or the like; for being spoken of another thing, they will not be Actionable.

That in many of the Cases before, for words that are not Actionable, yet if the party of whom they are spoken, have any special losse by them, the words may happily bear an Action.

6 That in Cases of words Actionable, there must be (as some say) in the Declaration an Averment of some special losse, that the party of whom the words are spoken, hath sustained by them: But it seems the Law, and the Common practise (at least) in some of the Cases, is otherwise, howsoever if the Case will bear it, it is best so to do. March. Rep. 96. Brownl. 1. part 10. 13. 2. part 100. 129. Croo. 1. 100.

Averment.

7 That this Action for such kinde of words as these, is to be subjected to the general Rules of other Actions for Slanderous words, viz. they must be false, malitious, certain, &c. For if they be true, or not malicious, or subject to such a Qualification by other words, as they may possibly be, they will not be Actionable at all.

CHAP.

CHAP. XXII.

Of an Action of the Caſe for a Conſpiracy.

A Conſpiracy (ſtrictly taken) is where two or more perſons do purpoſly and maliciouſly, conſpire and labour together falſly, and unjuſtly, without any ground at all, to indict another for ſome Treaſon, Felony, or other offence; and after hee which is ſo Indicted, is upon that Indictment after a lawful tryal, purged and acquitted; in this Caſe, and for this wrong, as he may have other remedy, ſo he may have remedy by an Action of the Caſe, wherein the Plaintiff ſhall recover damages according to his harm. Coo. 9. 56. F. N. B. 114, 115, 116. What it is. Sect. 1.

The word Conſpiracy, and the writ of Conſpiracy, is ſometimes taken more largely (to wit) for any agreement, or combination betwéen others, to vex and moleſt me in any veratious Suit whatſoever; in which Caſe the Law gives mee a remedy by this Action, to which we may happily ſay more hereafter.

If two, or more, do falſly, and maliciouſly, Conſpire to indict, or appeal another of any offence againſt any Law, as Treaſon, Felony, Barretry, or the like; and after he that is ſo indicted is acquitted, this writ lyes for him. Coo. 5. 56. F.N.B. 114. Bendloes Rep. Where and in what Caſe this Action will lye for a Conſpiracy, or not. And how.

152. Yelvertons Rep. 161. Bulſtr. 3. part 271. Bendloes Rep. 138.

And this Action is given to the party indicted, as well for the ſcandal that doth grow to him thereby, as for the trouble which may befal him, by reaſon of the preferring of the Bill of Indictment againſt him. Stiles Rep. 10. 11. Croo. 1. part laſt publiſht 564. 724. 725.

But for the opening of this point, theſe things are to be known, that in all Caſes where this Writ of Conſpiracy ſhall be maintainable, there muſt be theſe things in the Caſe.

1 This lyeth as well upon an Indictment for Treaſon, as upon an Indictment for Felony, and other matters. Bulſtr. 2. part 271. 271.

But it will not lye for an Indictment of Treſpaſs. Stiles Rep. 157. 424.

It muſt be by two or more perſons.

2 There muſt be two or more in the Plot, for the Writ of Conſpiracy will not lye againſt one man alone, nor againſt a man and his wife (who are but one perſon in Law) unleſs the Writ lay that they Simulcum others did the thing. And hence it is, that if the Suit be begun againſt divers, and all but one of them are diſcharged of it to all intents, as being acquit by verdict, hereby he is diſcharged alſo. F.N.B. 114. 116. 18. Ed. 1. Broo. Conſp. 21 Bendloes 138.

But if the Writ be brought againſt two, and one of them doth barr the Plaintiff by a Demurre in Law, or one doth appear and plead, and his plea is found againſt him: in theſe Caſes the other is not diſcharged, but the Plaintiff

Plaintiff shall recover, though the other be not attainted: And yet in this Case he may perhaps refuse to answer without the other; Or if all the Conspirators but one be dead; there the Writ may be had against him alone. F. N. B. 116. 114. 40 Ed. 3. 19. 38 Ed. 3. 3. 35 H. 6. 14. 24 H. 6. 25.

But an Action of the Case in the nature of the writ of Conspiracy will lye against one. Croo. 1. part 173. Bulstr. 3. part 271. and 1. part 285. Godb. 76. Croo, 1. part 173.

3 The party that brings this Writ of Conspiracy, must be indicted, arraigned, and acquitted, for a purpose, or intent without the Act, (however in some cases it was punishable in the Starre-Chamber) yet it is not punishable by our Law. And therefore this Action will not lye for a Plot, or Preparation, without an execution of it. Non officit conatus, nisi sequatur effectus. Coo. 9. 56. F.N.B. 114.

4 The proceeding, and prosecution in question, must be voluntary, and not compulsory. And therefore neither this Action, nor an Action of the Case in general, will lye against a man that doth prosecute another upon an Indictment by constraint, or compulsion in a Court, as where men are obliged to it by their Oath, or Office, as Justices of Peace or Jurors, sworn to present such offences, or witnesses called to testifie their knowledge of such things; or one that doth come into a Court voluntarily, and there discover one that Sect. 2.

is a Felon indeed; and yet if it be voluntary at the first, and after compulsory, it may be unlawful and actionable.

And yet if one shall come into a Court voluntarily, and discover Felonies, and it be true, which he doth discover, and this be without any malice precedent, no Action will lye for this. So, if one come into a Court, and by the command of all, or one of the Justices, draw or procure to be drawn an Indictment; or if, being bound to prosecute, he do so, and cause an Indictment, &c. Or if hee be bound to give in evidence, and he do so; or he do give false evidence, this will not make him liable to this Action. 27 H. 6. 12. 35 H. 6. 14. 27 H. 8. 2. Fitz. 115. Leonard Rep. 107.

For if this Writ should lye against one that comes in, only to swear to the truth of an Indictment, then would no man come in to do it. Coo. 4. 14. Bulstr. 1. part 185. Porter and Griffins Case. B. R.

This Action lyeth not against a Juror, or witnesse that comes into a Court to be sworn. Coo. 9. 55. And if a Witnesse, or or Juror had conspired out of Court, and the Witnesse had sworn, or the Juror had given a corrupt verdict, upon a Conspiracy before out of Court, they might have been punished in the Starr-Chamber. Coo. 2. 23. 24. And so also of the Judge, or Justice of Peace. But neither Judge, nor Jury, nor Witnesse, will bee liable to this Action, by our Law, in such a Case. Coo. 12. 23. 24. 12 Ed. 4. 18.

21.

21 Ed. 3. 17. 7 H. 4. 31. 35 H. 6. 14. 20 H. 6. 5. F. N. B. 115.

And yet, if there be just cause, as that in truth there is a Felony committed, and any man whatsoever, shall complain to a Justice of Peace of it, and thereupon, hee that doth complain, is bound over to prosecute (which is the ordinary course) and thereupon he doth prefer an Indictment, and prosecute, &c. this is not actionable. Croo. 2. 32. 130. 191. Bulstr. 1. part 150.

5 The proceeding, and prosecution must be malicious, for an unjust revenge, as well as voluntary. For if one man do prosecute another in this way, upon good ground; as where a Felony is done, and there is some cause of suspition of that person, more than another, either by the common fame, or otherwise; as where a man is robbed, and the next Village, upon Hue and Cry, doth make pursuit, and take a man whom they have in suspition, and thereupon the party robbed, doth indict that man, and upon the Indictment, in his Trial he is acquitted. Or a Coroner, after a murder, sitting super visum corporis cannot find out the murder; and then enquiring of the first finders of the body, they present, that J. S. killed him, and thereupon hee is indicted, and acquitted; these proceedings shall not be said to be malicious, nor are they as punishable, by any Action, as in case where it appears he doth begin and prosecute his work maliciously. And whether there be malice, or not in such a prosecution, must be judged

ged by Circumstances, as his manner of prosecution, speeches, and the like; and a Jury only must determine it. Bulstr. 2. part 2. 84. Broo. Consp. 4. Coo. 9. 55. Croo. 2 part 191. 194. Bulstr. 2. part 269. Leonard Rep. 107. pl. 146. Bulstr. 1. part 149. Croo. 1. part 90. Croo. 1. part last publisht. 724.

6 It hath been held by some Judges, that it ought not only to be maliciously contrived, but it must be false; and that if the party be guilty of the Crime, whereof he is accused, and for which he is prosecuted, that this Writ will not lye. By the two Chief Justices, and Lord Chancelour. Sed Quære, if this may not admit of some exception. Huttons Rep. 73.

x If one be robbed, by persons unknown, and one of the Thæves had a white Horse, and brown Cloak, and was like to the Plaintiff, and upon this was apprehended and prosecuted; this was held lawful, and that this Action did not lye for it. So where the Daughter complained to the Father, she was ravished by J. S. but was not so, and thereupon he did prosecute him; that no Action lay for this. So in like cases where there are good and seeming probabilities, a man may prosecute another after this manner, and justifie it, albeit the party accused be innocent, and the thing false.

But if there be no probabilities in the Case, or the Justice, in his examination, find no cause to bind over, and yet he procæds, Bulstr. 2. part 149. 150. 185. Godb. Rep. 203. Hut-

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tons Rep. 73. Bulſtr. 3. part 332.

And in this, it is ſaid, that if the Charge and Accuſation be true but in part, as where the Writ doth ſuppoſe a man to indict him for murder, and it was upon his Arraignment found, that he did kill the man, but that the killing was per infortunium, or ſe defendendo, in this caſe the Writ will not lye. Fitz. Conſp. 21. Stamf. lib. 3. cap. 12.

7 The party indicted, or appealed, muſt be legittimo modo acquietatus, (that is) he muſt be acquitted upon his Tryal by the Petit Jury after an Indictment found by the Grand Jury; or if hee bring an Appeal, be non-ſuit or the like. And therefore if the Acquittal be by a general, or particular pardon; or hee is diſcharged for the inſufficiency of the Indictment, and no Judgment be given upon it; or the party is indicted, and an Ignoramus is found upon the Bill; in all theſe Caſes, this Writ of Conſpiracy will not lye. Croo. 2. 131. Bendloes Rep. 152. Yelvertons Rep. 161. Brownl. and Goldsb. 10. 9 Ed. 4. 12. F.N.B. 114. Coo. 7. 45. 41. And yet the laſt of theſe Caſes, upon an Ignoramus found, is doubted of by ſome, and the contrary ſaid to be twice adjudged. 41 Eliz. B. R. 20. Jac. Sect. 3. Acquittal by pardon.

And for the generall Pardon, hee is to plead it, and the Juſtices are to allow of it. Brownl. 1. part 9. Bulſtr. 1. part 150. 151. Croo. 1. 208. Dyer. 28. 85. Goldsb. 51.

8 The Proſecution muſt be about ſome criminal matter, that may bring a ſcandal upon him; for if it be but a matter of Treſpaſſe

passe only, no Action will lye for this. Stiles Rep. 157.

9 This Action may lye, for procuring one to be indicted, although the party himself do it not, for one may exhibit a Bill to the Grand Jury without oath. Stiles Rep.

10 To encourage one that is robbed to cause the suspected Felon to be indicted: and to accompany him to the Assizes, is lawful to do, and will not bring one in danger of this Action. But if when he shall so do, he knows there was no Robbery done, it is dangerous. Goldsb. and Brownl, 9.

11 The Indictment must be preferred before the Judge that hath power to take it, or else no Action will lye for it. Croo. 1. part last publisht. 125.

But upon all this, there may seem to arise a Question; If in any Case where the party prosecuted is guilty of the offence for which he is prosecuted, be there never so much of malice in it. Whether for this, this Action may lye or not against the Prosecutor.

If the offence about which the Prosecution is, be Treason, or Felony, it should seem no malice shall be said to be in this, to make the Prosecutor liable to Action, if the party be guilty of the offence. But if the offence be only Barretry, or some small matter, and the party be guilty, there may haply be so much of malice in the Prosecution, as to make him liable to this Action. Yet see Bulstr. 3. part 331. Just. Crooks opinion otherwise in this, Bulstr. 1. 185.

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In all Cases, where the practise, or procurement, being by two, or more, will give cause or ground for a Writ of Conspiracy, there, if the same thing be done by one alone, a general Action of the Case, in the nature of a Writ of Conspiracy, will lye for it; so that if one man only do falsly and maliciously cause another to be indicted for Felony, Barretry, or the like, who is thereupon acquitted, an Action of the Case, in the nature of a Writ of Conspiracy, lieth for it. Hobb. Rep. pl. 11. 350. March. 130. Pasche. 7. Jac. B. R. Marsham Versus Pescod. 41. 42. Eliz. Co. B. Sheringtons Case. Croo. 2. 193. 32. Bullst. 3. part 331. Croo. 1. part 123. Croo. 1. part last publisht. 563.

Where, and in what case the general Action of the Case in the nature of a Writ of Conspiracy will lye against one man. Or not. And how.

Sect. 4.

And for the opening hereof, these things are to be known; That in all Cases where this general Action of the Case against one man shall be maintainable, there must be these things in the Case.

1 There must be somewhat done and acted, for the Action will not lye upon a plot, or purpose only. And yet it is not needful in this Case, that there be so much done, as there must be in the Writ of Conspiracy. For in this case, if one doth but procure another to be arrested, brought before Justices, examined, or imprisoned for a Felony, and he be never indicted for the Felony; it seems that for this only, without more, this Action will lye in this Case. Coo. 9. 56. 57. Coo. 4. 14. 15. F.N.B. 114. 116.

2 It must be false, and malicious; For if the

the thing be true, for which the Prosecution is, and there were probabilis causa, for what was done; no Action will lye for this. And therefore it is held, That no Action will lye for prosecuting another in a legal way and course of Justice; as for giving of evidence in any Court against an offender, or for petitioning of a Judge to have the Good Behaviour, or the like. Bulstr. 2. part 269. Croo. 2. 193. And so, as it is in the Cases before of a Conspiracy, it is in most things in this Action also.

3 In this Case the Plaintiff hath not need to set forth in his Writ, that he was legittimo modo acquietatus, as he must in the Writ of Conspiracy. Pasche. 3. Jac. B. R. Marshams Case.

Nor is it necessary in this Case, that the Prosecution be to an Acquital by verdict. For if the party do only charge him with a crime, and cause him to be arrested upon it, and go no further, he may have this Action for the doing of so much, and no more. Coo. 9. 55. Croo. 1. 223. And yet see Godb. 76. Croo. 1. 173. Hughes page 52. Where it is said, that this Action will not lye, no more than the Writ of Conspiracy, unless he shew in his Declaration, that he was upon a Trial legittimo modo acquietatus. But the contrary hereof seems to be the Law herein. Croo. 1. 197. 201. Coo. 9. 55. And in 3. Jac. B. R. Markam and Pescods Case.

It is said to be agreed, that a Writ of Conspiracy will not lye, but where the Plaintiff

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is legittimo modo acquietatus. And yet that if one prosecute another to Indictment, and Imprisonment, falso & malitiose, and go no further, that for this, the party prosecuted may have this Action, both for the Slander and vexation both; for he is legittimo modo acquietatus, by the not prosecution. Goldsb. 51. Hughes Rep. 54. Croo. 1. 223.

4 But in this Case, there need not be, as there must be in the Writ of Conspiracy, two or more in the Conspiracy, for this general Action of the Case, in the nature of a Conspiracy, will lye against one only. Codb. Rep. 76. Croo. 1. 173.

5 It may, out of this, appear to be a safer way in these Cases, for a man that hath suffered such an injury, rather to bring the general Action of the Case, than the Writ of Conspiracy for his relief herein.

What shall be said a good plea in Barr, in this Action. Sect. 5.

It will be a good Plea in Barre of this Action, to Plead an accord with Execution, between the parties, 21 H. 6. 28.

So to shew that the Indictment, upon which the acquittal was, was erronious, notwithstanding that the party indicted did not take advantage of it. Croo. 9. 26. 9 Ed. 4. 12. Bridgmans Rep. 132. Dyer. 286. 34 H. 6. 9.

So to say, that there is no such Record as the Plaintiff doth set forth. 9 H. 6. 26. Croo. 2. 32.

So to shew any of the things before set down, that it was done by compulsion, in pursuance of their oath, as Judges, Jurors, and the

the like. 20 H. 6. 5. Croo. 1. part last publisht 724. 725.

So that one hath had his goods stoln, and found them in the Plaintiffs possession, and that he had other causes to suspect him, complained to a Justice, who bound over the Plaintiff to appear, and the Defendant to prosecute. Bulstr. 2. part 284. 285. Croo. 2. 193.

Caution to a Defendant.

And if the Defendant hath any of these or such like thing in his Case, it will be his wisdome to plead it specially, and not to plead, not guilty. Leonards Rep. 107.

But it is no good plea to say, that the Plaintiff was guilty of the Felony whereof he was so acquitted, or that one of the Defendants is dead since the Writ brought, or that the Record on which the Action is grounded, is, that the Plaintiff and divers others besides him were indicted therein. 18 Ed. 4. 1. 9 Ed. 4. 23.

Case 1.

Some Cases for illustration and confirmation, of the things before laid down about a Conspiracy. Sect. 6.

1 One brought an Action in the nature of a Conspiracy, against another, for procuring him to be indicted for the Ravishment of his Daughter, and the Defendant (her Father) shewed that his Daughter complained of it to him, and he to the Justice of Peace, who bound the one to appear, and the other to prosecute at the Gaol-delivery, where he preferred a Bill of Indictment, and gave evidence, &c. And this was held a good plea and excuse, without

without saying, that there was a Rape; But if the Plaintiff had set forth, that there was no Rape, and that the Defendant knew there was none, haply the Action might have been maintainable. Croo. 2. 193. Coxe versus Wirral. The like case is, Croo. 1. 130. Markams Case. And the like in Bulstr. 2. part 286.

Case 2.

2 Doggatee vers. Lawry. B. R. Croo. 2. part 190. This general Action of the Case, was brought against the Defendant, for, that he did falsly, and maliciously accuse the Plaintiff of a Felony, and caused him to be brought before a Justice of Peace, and procured him to binde the Plaintiff, to appear at the Gaol-delivery, and there put in a Bill of Indictment against him, which was found not true, &c. The Defendant pleaded, that he had Sheep stoln, and missed others, which were found in the Plaintiffs possession, going with twelve Sheep that were stoln, &c. And the Jury upon the tryal, found him guilty, and he had Judgement, and could not get it staid, because the Declaration lay to be false and malicious, and the Jury found it also to be so.

Case 3.

3 Huttons Rep. 49. Hord versus Cordery. The Plaintiff brought an Action of the Case against

against C. the Defendant, and B. his Wife, and D. for a malicious confederacy, to charge the Plaintiff with the Felonious Rape of the said D. and procured him to be examined before a Justice of Peace, and thereupon was bound in a Recognisance to appear at the general Sessions, and from thence bound over to the Assizes, and there they Indicted him, and he was acquitted, and he averred that he did not ravish her: And adjudged for the Plaintiff after a Writ of error, and twenty marks costs given for his delay.

Case 4.

4 Leonards Rep. pl. 146. f. 107. An Action of the Case of this nature, was brought by Joan Jerome against Knight, and shee declared, that Knight had maliciously caused the Plaintiff to be Indicted of Felony, and to be Arraigned upon it, and that she was legittimo modo acquietatus, &c. And the Case was this, that the Defendant came into the Court where the Sessions was held, and complained of the Plaintiff for the said Felony, for which the Justices commanded her, to cause an Indictment to be drawn; and the Plaintiff had Judgement and could not avoid it by a Writ of error.

Case 5.

5 Smith versus Crashaw and others. B. R. M. 1. Car. 1. Croo. 1, 10. The Plaintiff brought

brought his Action of the Case in nature of a Conspiracy against the Defendants, for that they had at T. &c. falsly and maliciously accused him of Treason, caused him to be apprehended, brought to a Justice, to be committed to Gaol, Indicted, and falsly and maliciously affirmed it to be true, and not guilty was pleaded, and verdict given for the Plaintiff, and Judgement given for the Plaintiff, two hundred and forty pound Damages, notwithstanding motions to Arrest it, and after a solemn deliberation. The like Case was by Lovet vers. Faulkner. 11 Jac. B. R. Bulstr. 3. part 279.

Case 6.

6 Smith versus Hodgeskins Pasche. 8. Car. 1. B. R. Croo. 1. part 201. An Action was brought for this, that the Defendant malitiose et falso crimen feloniæ ei imposuit, and caused him to be arrested for Felony, and for these words, and this work; it was adjudged the Action of the Case did lye.

Case 7.

7 Maning and his wife versus Fitzharbert. Hill. 7. Car. 1. B. R. Croo. 1. 197. An Action of the Case was brought against the Defendant, for that he ex malitia of the Plaintiffs wife, crimen feloniæ imposuit, caused her to be brought before a Justice, there charged her with Felony, requirey that she might be

bound over to the Assizes, which he was forced to do, &c. and this was found for the Plaintiff, and had damages and Judgement, &c.

Case 8.

8 Williams versus Fletcher. Pasche. 10. Jac. In an Action of the Case in nature of a Conspiracy, for indicting of a man for a common Barretor, and making oath to the Jury, that the Bill was true, upon which the Bill was found, supposing it false and malicious. In this Case it was adjudged, that in this Case no Action of the Case in nature of a Conspiracy will lye. Bulstr. 1. part 185.

Case 9.

9 Three men conspires amongst themselves to charge J. S. with a robbery, and to procure him to be Indicted, and procured divers Warrants from Justices of Peace, by which he was apprehended and examined, and after they preferred an Indictment against him, whereupon an Ignoramus was found, in this Case it was resolved, that an Action of the Case in nature of a Writ of Conspiracy lieth. Coo. 9. 55. Pasche. 5. Jac. in Cam. stellat.

Case 10.

10 It was resolved by the two chief Justices, and the Lord Chancellor, and the chief Baron,

Baron, That when the Grand Jury doth indict one of Murder or Felony, and after the party is acquitted; that no Conspiracy lieth for him that is acquitted, &c. this.

Case 11.

11 A man brought this Action of the Case in nature of a Conspiracy, for causing him to be indicted of Felony, &c. for suffering a Prisoner to escape that was convicted, and Judgement was given for the Plaintiff, for this is more than trespasse, Stiles Rep. 157.

Case 12.

12 Hill. 8. Jac. Wall and Hills Case. Bulstr. 1. part 149. An Action of Conspiracy was brought for conspiring to indict the Plaintiff for a supposed counterfeiting of a Letter, and for the malicious prosecution thereof at the Assizes, and that he was acquitted. And he pleaded, that the Letter was brought to him by one unknown, and delivered to him, two others being in his company, one of which afterwards told him, that the Plaintiff was the man that delivered it, and thereupon he prosecuted him for it; in this Case it was adjudged for the Plaintiff, for that the prosecution was not upon the Defendants owne, but upon another mans suspition, and his prosecution, and the justification thereof must be upon good probabilities, and not upon the sus-

pition of others. Bulstr. 1. part 149. See Cro. 9. 26. Pasche. 9. Case 13. Car. B. R.

Case 13.

13 The Action was, for that Falso & malitiose, he spake these words of the Plaintiff, He committed Felony, and procured him to be Arrested and Imprisoned for three daies, and had Judgement after a Plea by Verdict, &c. Cro. 1. 223.

CHAP. XXIII.

Of Pleadings in Actions of the Case for words.

Of the declaration to maintain this Action, and what is requisite therein. Sect. 1.

AS to the Pleadings in all Actions of the Case for words, this is first to be known.

1 That the pleadings of the parties to their Action, are in this Action much to be heeded, for the Plaintiff or Defendant, either of them in this may by his Omission, or Commission, very quickly advantage or prejudice himself, and therefore they must be very careful herein.

2 If there be any thing in the truth of the Case, that may make to the Plaintiffs advantage, it doth concern him to insert it into his Count; and if there be any thing that will make to the advantage of the Defendant, to defend himself against the Action, and the Plaintiff omit it, the Defendant must be sure

ſure to take hold of it, and to mention it in his plea.

As to Declarations in Actions of the Caſe for words, theſe general things are to be known.

1 That the Declaration is good without the word Malitioſe, Noys Rep. 35. yet ſome ſay, if falſo, or malitioſe be omitted in the Declaration, that it is not good. Trin. 7. Car. 1. B. R. Norman and Simons Caſe, yet ſee the contrary in Stiles. Rep. 59.

2 That if it be, dixit the words, and [de Querente] is left out, it is good, Stiles Rep. 69. Bendloes Rep. 143. if there be any thing to ſupply it. Croo. 2. 39. but if the words be not recited, to be ſpoken of the Plaintiff in the Writ, or in the Declaration, and where he reciteth the words he ſaith, Innuendo the Plaintiff, this is defective. Croo. 2. 126. Brownl. &c. part 4.

3 That where theſe words [in Auditu cum plurimorum ligeorum,] &c. be left out, it is held good enough, and yet if theſe, or other words of uſual form be omitted in the Declaration, there perhaps the Defendant may take ſome advantage by it, and avoid the Action for that time, if he take exception to it before he Plead, and before the Tryal; for by his Plea, and the Verdict, many defects in the Declaration may be cured. Croo. 2. 33, 39. Croo. 1. 144. Hobb. Rep. 63.

4 That the words of the Declaration with in preſentia diverſorum, without in Auditu, is

good enough, for that will be intended. Croo. 1. last publisht, 486,487.

5 If a man sue, and declare of the losse of a Marriage, by words spoken, it is not sufficient to say, He intended and endeavoured to have a Wife; but he must say, That there was a communication of Marriage, &c. Bulstr. 1. part, 276.

x 6 If the Declaration set forth, That he spake the words of the Plaintiff, and in truth they were spoken to the Plaintiff, it will be good enough, and that Dixit de præfato, and dixit ad præfatum is all one. Croo. 56. and 2. 89.

x 7 The Declaration was laid thus, That B. that serves Mistris Shelly, hath murdered Adams his Childe [Eliz. Addams filiam Johannis Addams modo defunct. Innuendo] in this Case the Count was adiudged naught, for modo defunct. referreth only to the time of the Action. Coo. part 13. 71. so if for these words that the Count be, for saying, That the Defendant hath poysoned J.S. Modo defuncto, which refers to the time of the Count, this is not good, for he is to averhim to be dead at the time of speaking of the words. Croo. 2 part, 343. Jenk. Century 8. Case 58,59. Cent. 7. Case 40.

8 Where the Action is laid for speaking of the Plaintiff, Hec verba, &c. without saying, that there was any speech of the Plaintiff, or any Innuendo, &c. it seems good enough. Croo. 2. 230,241.

9 To

9 To ſay in the Count, Palam & publice promulgavit, is good without in preſentia & auditu, &c. Croo. 1. part laſt publiſht, 861.

10 It matters not whether the Plaintiff do in his Count ſet forth all the circumſtantial words, as they were ſpoken, ſo as he ſet forth the very words truly that are actionable; and that he muſt be ſure of, for a little variance may marre all. And therefore it is wiſely done of thoſe, that where they doubt, they charge the Defendant with ſpeaking of various words at ſeveral times, and ſeveral wayes, and by that are ſure in one of them to hit upon the very words themſelves, or the ſubſtance thereof. But then he muſt take care, that the Jury do aſſeſs damages only for the words that are ſpoken. Croo. 1. 238.

11 The Count was, Quod propalavit quædam verba ſcandaloſa, prout in his Anglicanis verbis ſequend. and ruled to be good. Croo. 1. part laſt publiſht, 573.

12 If the Count be thus, That the Defendant Colloquium habens cum querent, in the preſence of others dixit [meaning the Plaintiff] Thou art a Thief, &c. and this was ruled good. Stiles Rep. 298.

13 That where the Declaration is laid thus, That the Defendant ſaid of the Plaintiff, Thy Father is a Theef [Innuendo the Plaintiff] that this is not good, unleſs he alledge it to be ſaid to be ſpoken to the Son of the Plaintiff, &c. Cro. Rep. 1. 65.

Of the Innuendo in the Declaration. Sect. 2.

These things are to be known about an Innuendo in a Declaration:

Innuendo

1 That the same may in many cases make certain, that which will otherwise be incertain.

2 That the use and office of an Averment, by an Innuendo, in a Declaration, is either to contain and design the same person, which was named before incertainly. As thus, two are speaking together of B. and one of them saith, He is a Theef; in this case B. may say in his Count, that they had speech of him, and one of them said, He [Innuendo the Plaintiff] is a Theef. Or to declare the matter, or sense of the words themselves, which were certainly exprest before, thus, A. and B. speaking of C. A. said, That B. was a Traytor, to whom B. said, That he was so too: In this case, if A. bring Action for these words, he may shew in the Declaration, that there was a speech between him and the Defendant of C. And that the Plaintiff said to the Defendant, That C. was a Traytor; and that the Defendant said thereupon to him, That he [Innuendo the Plaintiff] was so too. In both these cases it is good, Mich. 20 Jac. B.R. Cro. J. last publisht, 192, 193. But an Innuendo will never make words actionable, which of themselves are unactionable. Brownl. and Goldsb. 7. Coo. 4. 17, 20. Croo. Rep. 1. 303.

3 That this Averment by Innuendo, cannot change the nature of the words, and make a person, or matter certain in particular, which in it self is so general, that it is altogether incertain. Nor can it alter the matter or sense of the words themselves. As where the

words

words are, He did burn my Barn; he cannot by an Innuendo a Barn full of Corn, make the words actionable. So where the words are, He is forsworn, by adding Innuendo in a Court of Record. So where the words are, He hath the Pox, by adding, Innuendo the French Pox. So where the words are, He took my money from me with a strong hand, Innuendo Feloniously. So where the words are, The Servant of J. S. (who hath many Servants) is a Theef, [Innuendo his Servant J. S.] So, One near about J. S. is a Traytor, Innuendo J. S. In these cases, the Innuendo will not make these words, otherwise unactionable, thereby actionable. Coo. 4. 17, 20. Owens Rep. 58. Hob. Rep. pl. 3. 48. Goldsb. and Brownl. 7, 9. So if the words be of a double and indifferent meaning, and in the one sense actionable, and in the other not actionable, this will not make them actionable; or if the words be incertain of themselves, or in the person of whom they are intended, an Innuendo will not make them certain, and actionable. Mich. 6 Car. 1. B. R. Hobb. Rep. pl. 4. 48. Croo. 1. part last publisht, 496, 497.

4 Where the Action is for words, by which a Marriage is lost, it is not enough to say, intendebat, or conatus fuit, to have such a woman. But he must say, Quod colloquium habitum fuit de Matrimonio. Bulstr. 2. part 276.

As to this of Averment, these things are to be known.

1 That

Of an Averment in the Declaration. Sect. 3.

93. 1 That if the Declaration be for these words, That J. S. hath killed a man; that it is not necessary to aver, that the man is dead. Winches. Rep. 40. Bulstr. 1. part 42. So if the words be, for which the Action is brought, Thou hast robbed my Son, or stoln my Horse; there will not need an Averment, that he has a Son, or that he was robbed, or that he had a Horse. Winches. Rep. 40. Bulstr. 1. part 42. Noys Rep. 55. 63. 116. Winch. 70. 98.

Sect. 3. 3 That where the words spoken, for which a man brings an Action, do (import a scandal of themselves) concern him, and may indanger his life, liberty, or member, there need not to be an Averment of any special losse by them; And therefore, for calling of one Traitor, Thief, or the like, there will not need an Averment of any losse by it to be mentioned in the Declaration, as where the Action is for calling of one Bastard, or the like. March. Rep. 1. So where the scandal is about a mans Office, or Trade; so it is also where it doth charge a man with such a disease that must separate him from the society of men; But in other cases generally there must be an Averment of special damage. And it is best in most cases to avet it, if the case will bear it. March Rep. 59. pl. 93. Brownl. 1. part 10. 13. and 2. part 100. 129. Mich. 17. Car. B. R. And so it is also for words spoken, that are not in themselves actionable, of a man or woman, whereby he or she loseth a Patch, Office, Service, or Preferment, he or she stands for, and

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is like to have, there must be an Averment of a ſpecial loſſe by it to maintain the Action, and warrant the Declaration, Paſche. 5. Car. B. R. Axes Caſe. Trin. 17. Car. 1. Co. B. Sanderſons Caſe. So alſo for any words of paſſion that may ariſe to be actionable, as to call one Rogue, Villain, or the like; theſe Actions muſt be made up by a ſpecial Averment, Coo. 4. 15. So, for any words that are called ſpiritual, to make them actionable, it muſt be by a ſpecial Averment of loſſe, Coo. 4. 17.

4 If the Action be laid, for ſaying of theſe words, Thou haſt killed J. S. it need not in this caſe be averred, that J. S. is dead. Adjudged B. R. Coo. 4. 16. Hobb. pl. 11. And yet this hath been denied, and the contrary maintained by ſome. March. Rep. 109. pl. 187. Pa: 87

5 If the Slander be upon a report, it muſt be averred in the Court, that there was no ſuch report made. Hill. 4. Jac. B. R. Lady Morriſons Caſe. Paſche. 42. Eliz. Co. B. Morleys Caſe. As if the Declaration be for this, That A. B. told me that D. the Hoſtler, and he ſtole ſuch a mans horſes, he muſt averr that A. B. did tell him ſo, otherwiſe if A. B. did not tell him ſo, the Action will not lye. 42. Eliz. Co. B. Mowl verſus Skebington. Lord Lumleys Caſe. 10. Eliz. March. of Slanders. 2. part 13. Pa: 89

6 The Brother of the Defendant ſpake theſe words to the Plaintiff, Thou Theef, Thou Gaol-whelp, &c. And after this the Defendant

Defendant said, That which my Brother spake is true, I will justifie it. In this case it was agreed, that there must be an Averment, that he had notice of his Brothers words. Brownl. 2. part 100.

7 That the word Scienter, is a necessary word in some Declarations. Godb. Rep.

8 That where the Action is brought for such strange words as these, Thou hast strained my Mare, thou art mainsworn, or the like hards words, there needs no averment what the sense thereof is in the Country where they are used, but it may be proved by witnesse at the Trial. And yet some say otherwise; the sure way is to do it by the Declaration. March. Rep. 18. Croo. 1. 96. in Hughes Rep. page 37. And so it seems it the Law for a Lauder in another tongue. Hobb. Rep. 165. 268. pl. 236. March. Rep. 18. Bendloes Rep. 134. Stiles Rep. 263. Pasche. 7. Jac. B. R. Coo. 4. 25.

9 That if the Action be brought, for saying of the Plaintiff, He was in the Goal at S. for robbing, &c. it need not be averred, that he was not in the Gaol, and yet it is the safest way so to set it forth. Sprat and Haines Case.

If one sue for this, said, He that dwells in the next house to J. S. one R. L. did rob me; he that sues upon this, must aver, he dwells in the next house to J. S. Pasche. 7. Jac. Clerks Case. B. R. So if it be for these words, Pritchards man robbed me, he must averr he is Pritchards man. Coo. 4. 16. Hobb. Rep. 16. Brownl. 1. part 13. and 2. part 100.

11 That

11 That in all theſe Actions for words, where there is any thing that is the cauſe or ground of the Action, or tends neceſſarily to the maintainance of it, in ſuch Caſes the Action is not maintainable, unleſſe that thing be expreſly averred to be, or not to be as the Caſe requireth. As if it be brought for this, Whoſoever is he, that is the falſeſt Thief, and the ſtrongeſt in the County of Salop, whatſoever he hath ſtoln, or whatſoever he hath done, Thomas Haſelwood is falſer than he. In this Caſe it was reſolved, that an Averment muſt be made, that there were Felons in the County of Salop, or the words will not bear Action, for if there were no Felons there (which ſhall rather be intended) then is it no ſlander. Hobb. Rep. 309. Paſche. 1. Jac. B. R.

So alſo if the words be, That he is as very a Thief, as any is in England; that in this Caſe it is held that there muſt be an Averment, that there is ſuch a Thief in England; yet this Caſe is more doubtful. Noys Rep. 116. Winch. Rep. 70. 89. So if one ſay, My Son ſtole my Hens, if hee ſue his Father, he muſt averr he is his Son. Mich. 14. Car. B. R.

It will be the wiſdome therefore of a Plaintiff in his Declaration, not to omit any thing this way, for to averr any thing needleſſe cannot hurt. But not to averr any thing needful is dangerous herein, and deſtructive to the Action. Caution.

12 If one had ſlandered a man by his Bill

in

in the Starr-Chamber, and one had brought an Action for it; and the party said his Bill was true; this had not been sufficient without Averment, and shewing of the particulars of the Bill. Coo. 4. 14.

13 Where the Declaration is for this, Thou art a Thief, for thou stolest my Sons goods, it needs not be averred that he had goods. 38. Eliz. Co. B. Ellin and Moores Case.

14 Where the Count is for this, I will justifie that Barnes is accessary to the Burglary for which C. D. was hanged; there needs no Averment, that he was hanged for such a Burglary. Trin. 9. Jac. B. R. Barnes Case. If the Action be brought for this charge, He stole the Horse of J. S. it need not be averred he had a Horse. If for this, He killed his Masters Cook, it need not be averred, that his Master had a Cook. Bridgman Rep. 60.

15 Where the Count is for this, My Master. B. hath robbed me of all my goods; it need not be averred, that he was his servant. M. 15. Jac. B. R. Browne and Low. So where the Count is, for saying, Pritchards man robbed him; it seems it must be averred, that he was Pritchards man.

16 If the Plaintiff declare, that there was a conference between the Defendant, and one R. and he said, Your Master E. (meaning the Plaintiff) is a forger of Deeds; he must averr, or it must expresly appear, that R. when he spake the words, was his servant. Brownl. and Goldsb. 10.

17 That

17 That it will lye for theſe words, Thou didſt kill thy Maſters Cook, [Innuendo] J. S. late ſervant of J. D. without any Averment, that the Plaintiff had a Maſter, or that J. D. was his Maſter. Bridgm. Rep. 60.

But if the Wife of the Defendant ſhall ſay to the Plaintiff, to A. B. Where is that lying Thief thy Son (Innuendo the Plaintiff) he hath murdered my Aunt (Quandam D. S. (Amicam defendentis Innuendo) and I will prove it; in this caſe it is doubtful, Croo. 1. 127.

18 That it is held by ſome, that if one bring an Action for words ſpoken againſt him as a Juſtice of Peace, or Officer, that the Plaintiff is to aver in his Count, that he was a Juſtice, or Officer at the time of the words ſpoken. But otherwiſe it may be, if it be brought by a Traveſman for a ſlander to him. And there, that it will be ſufficient to ſay, That he hath been of the Trade for divers years paſt; and that this will be ſufficient. Yelvertons Rep. 21. 153. 158.

19 If the words be, Thou art a Thief, and haſt ſtoln more goods, than I am worth; here needs no Averment of his worth. Bulſtr. 2. part 141.

So where the words be, Thou haſt ſtoln more horſes, than I have fingers and toes, there needs none of his fingers and toes. Bulſtr. 2. part 141.

20 If the words be thus, He hath no ſheets in his houſe, but what were ſtoln for him; there muſt be an Averment, that he hath

ſheets

sheets in his house, or the Action will not lye. 42. Eliz. B. R. Bulstr. 2. part 141.

As to this, the Plea in Barr, these things are to be known.

1 That the pleading of the Defendant, or the verdict of a Jury, or both in many cases, may help to cure a defect in the Action brought. Croo. 1. 303.

What shall be said, a good plea in bar, or Justification to this Action. Sect. 4.

2 That where the Declaration, for the substance of it, is incertain, and naught, the Barr will not help it. But where the fault is in the form only, the Barr may help it. As where I. S. declares for words thus, quod in presentia diversorum, &c. dixit de prefat. querent. hæc verba Anglicana, viz. thy Father [predict. querent. Innuendo] is a Thief, for he stole my Sheep; the Defendant doth justifie, and it is found for the Plaintiff; no Judgement can be had, because it doth not appear that the words are spoken of the Son of the Plaintiff. Brownl. Rep. 1. 187.

3 That the Defendant may, in this Action, plead not guilty; or if the Plaintiff declare upon some of the words only, where all of them together are not actionable, the Defendant is to set them forth at large, as he spake them, and traverse, justifie or plead not guilty to the rest of the words as the Case is. Or if the words be true, and he be able to prove it, he may justifie the speaking of them. As for a charge of Perjury, to shew he was perjured in the Star-Chamber, for calling of him Thief, that he was attainted of Petit Larceny. Coo. 4. 13. 19. New Book of Entries. 24.

25.

25. 26. And ſo in all caſes, where the Plaintiff ſhall omit any thing material on the Defendants part, the Defendant may plead it by way of Bar. Coo. 1. 17.

4 To ſay, a man was indicted for a Felony, may be juſtified, if it be true; but the words are not actionable. Hobb. Rep. pl. 89.

5 In a Charge of Perjury, it is not a good Juſtification, to ſay, That he ſwore ſuch a thing in a Court falſly, unleſſe he add this, knowing it to be falſe. M. 38. 39. Eliz. B. R. Willis Caſe.

6 If one call a man Thief, he may juſtifie it, for that he ſtole a ſheep, Hobb. Rep. 258. 27 H. 8. 22.

7 If I ſay to another, A. B. is a Thief to J. S. and to me; and an Action is brought for this, and I juſtifie for a Felony done to me only; this is not ſufficient, for the Charge is of a double Felony, and the Juſtification is only by a ſingle Felony. M. 21 Jac. B. R.

8 An Action was brought againſt Husband and Wife, for words ſpoken by the Wife, and they pleaded not guilty, and agreed to be nought, and that the Wife alone is to plead not guilty. Brownl. Rep. 6. Hobb. Rep. 126.

9 That where A. doth call B. Thief, and he doth juſtifie that he ſtole ſheep, and the Defendant ſhall plead the general pardon after the words ſpoken, that this is not good. M. 13. Jac. Com. B. Cuddingtons Caſe.

10 That it is not a good juſtification to a

Charge of calling one Thief, that a Robbery was committed, and the common fame was, that the plaintiff did it, Dyer 230. Brownl. 2. nor is it a good justification for calling of one Murderer, to say, There was Murder done, and the Plaintiff was indicted for it, or that he was imprisoned for it; or, that the common fame was, that he did it. Dyer 236. Broo. 127. New of Entries, 26, 27. Nor can one justifie the charging of one with Felony after he hath a pardon. Hobb. Rep. pl. 106.

11 If in this Action, the Plea be not guilty, and part of the actionable words only be found, this will maintain the Action. But if the Defendant take a Traverse to the words, Contra. Noys Rep. 134.

12 The Action was for this, Thou didst keep, and sell by false weights, and in twenty four shillings bestowing, thy weights were false two ounces, and thy man will be a witnesse against thee, and I will prove it. The Defendant justified in pleading, that the Plaintiff kept a Shop, and used unlawful weights, and by such weights sold, by reason whereof he said these words, viz. Thou didst keep, and sell by unlawful weights, and in twenty four shillings bestowing, thy weights were false, an ounce and three quarters, and thy man, &c. and traversed the words in the Declaration; and it was adjudged a naughty Traverse, for that the words in the Barre, and justified by the Defendant, are actionable. Goldsb. and Brownl. 5.

13 The

13 The Action was brought for this word perjured. The Defendant justified, that it was found by Verdict, that the Plaintiff was perjured, but no Judgement was entred upon that Verdict, and it was adjudged no Barre, because no Judgement was given in the first Action. Goldsb. and Brownl. 11.

14 That where the words may be justified Ex causa dicendi, there the Defendant may (if he please) take the general issue not guilty, Modo & forma, &c. and give in evidence of the coherence, occasion, or connexion of the words, or he may (as the Cause shall require) justifie the speaking of other words, and traverse the speaking of the words in question, and upon the evidence have the words specially found.

15 And when the matter in fact will serve for the Defendant, albeit he may suppose, that the Plaintiff hath no cause of Action, yet is it not safe for him to hazard his Case upon a Demurrer, but first let him take his advantage of the matter of Fact, and leave the matters in Law, which arise upon the matters in Fact to the last, for after trial the matters in Law shall be saved to him. Coo. 4. 14. See more, Croo. 1. part last publisht. 239. 492.

As to this question three things are to be known.

What shall be said a sufficient verdict of a Jury herein, upon which Judgement may be had.

1 That where the Action is laid for saying, I know him to be a thief, and the Defendant pleaded other words, Absque hoc, &c. And the Jury doth find it thus, I think him to be a

thief, this will not be a good Verdict to give judgement upon. Hobb. pl. 213.

2 That where the words are laid to be spoken thus, That Nicholas Fenner procured eight or ten of his Neighbours to perjure themselves; the Defendant pleads not guilty, and the Jury doth finde, that the words are thus; That Nicholas Fenner had caused eight or ten of his Neighbours to perjure themselves; it is doubtful whether this be a good Verdict to give judgement upon, or not. M. 4. Jac. B. R.

3 That where the words are said to be thus, That John Barber and his Children be false theeves, men cannot have their Cattle going upon the Common; but they will kill, and eat them, &c. and the issue is joyned, whether the Defendant spake the words, modo & forma, &c. and the Jury doth find the words spoken to be thus, viz. Men cannot have their Cattel, &c. but they do not find the first, which are the only Actionable words to be spoken; this is not a good Verdict to have a Judgement for the Plaintiff, for the words found are not Actionable. Dyer 118.

4 That where the words are laid to be spoken thus, A. is a Thief, for he hath stollen a Lamb from A. and Geese from B. and killed them in my ground, the issue is, whether the words be spoken modo & forma, &c. and the Jury finde that the words spoken were thus, That the Plaintiff was a thief, for he hath stollen a Lamb from A. and killed it in my ground,

ground, and nothing laid of the Geese, this is good enough to warrant the Declaration, and to give him a judgement upon it, Hill. 3. Jac. B. R.

5 That were the words are laid to be thus, Burges is a maintainer of Thieves, and a strong thief himself, and the issue is joyned upon the words, Modo & forma, and the Jury find all the words, but the word [strong] this a sufficient Verdict to ground a judgement for the Plaintiff, and by these Cases we may observe, That if the Action be brought for more words than are found, yet if there be some of the words that are actionable found, it is well enough. Dyer 11.75. And so it is if the Jury finde other words than those that be in the Declaration, if they doe not finde withall so much of the actionable words for substance, as are set forth in the Declaration. Croo. 2. 407. 408.

6 Where an Action is brought for words, some whereof are, and some are not actionable, and the Jury assesse damages for all together; this will be error. And yet if words be spoken at several times, and the words spoken at one time are actionable, and the words spoken at another time are not actionable, but they have reference to the former words; in this Case, the damages may be assessed for both entirely, and good. Croo. 1. 238. And yet if an Action be brought for calling of one Murtherer, Blood-sucker, Villain, Rogue, Bankrupt, some of which are, and some are not actionable, and the damages be assest by the Jury intirely, this will be good enough, and it shall be intended

to be given only for the actionable words. Croo. 1. 238.

7 Where words are spoken at several times, and some are actionable, and some not, and two Actions are brought for them, and both are found for the Plaintiff, and damages are given entirely, this is not good. But otherwise it is, where one Action is brought for words actionable spoken at one time, and words not actionable, spoken at another time, for there it shall be taken to be given for the actionable words only. Bulstr. 3. part 283. yet see the contrary in Coo. 10. 131. Jenk. Cent. 8. Case 89. Croo. 1. 471. Hobb. Rep. 6. Jenk. Cent. 7. Case 70. Croo. 2. 343.

8 The Plaintiff declares, that the words are spoken Falso & malitiose, and the Jury finde, that they were spoken Falso & injuriose; this is not a good Verdict for the Plaintiff to have a Judgement upon it. Trin. 7. Car. 1. B. R.

9 The Declaration was for calling of J. S. thief, and the Record of Nisi prius was, quod prædictus W. dixit de prefat I. S. hæc scandalosa verba, &c. prefat W. Innuendo, whereas it should have been prefat. I. S. Innuendo, and this was amended by the Court. Croo. 2. 157.

Where the plea in Bar, or Verdict of the Jury will help to maintain the Declaration and Action, or not.

As to this Question, these things are to be known.

1 That the Writ and Declaration must set forth, that the words were spoken in auditu, or in presentia quamplurimorum subditorum, &c, otherwise it is not good, and the Defendant may

may take advantage of it; but if he doe not except againſt it, but plead to it, and it be put to a Jury that doth find for the Plaintiff, this may haply ſupply that defect. Croo. 1. 65. 144.

2 That where the words ſuppoſed by the Declaration are, That Eyres [Innuendo the Plaintiff] is a Thief, And hereupon the Jury doth find it for the Plaintiff; this is good, and doth make the incertain words certain and actionable. Eyres Caſe. M. 7. Jac. B. R.

So if one ſay to another, of a woman paſſing by, ſhe is a Witch, and hath bewitched my child [Innuendo, the Plaintiff] and verdict is given for the Plaintiff; now it is out of Queſtion. Paſche. 18. Jac. B. R. Roberts Caſe. Sect. 61.

3 That where the words that are found by the Jury, do not agree with the words in the Declaration, in the ſubſtantial and eſſential form; in this Caſe, they will not warrant and maintain the Declaration. But if they do agree in the ſubſtantial and eſſential form, though they agree not in every word, yet they may warrant the Declaration, and maintain the Action. Hobb. Rep. pl. 213. M. 4. Jac. B. R. Hill. 3. Jac. B. R. Dyer 21. 75. And although all the words in the Declaration be not found, yet if the eſſential and ſubſtantial form of the words be found, it will be good enough. Dyer. 21. 75.

4 In this Action, for words upon not guilty pleaded, the Jury found the words laid in the Declaration, to be ſpoken by the Defen-

vant of the Plaintiff. The words were these: Thou art a Thief, and I will prove thee so. And the Jury finde, that he spake the words de Querenti, not in his presence, but in his absence, and so find it specially. And it seems it might be good. Bulstr. 1. part 56.

5 In this Action against a Husband and Wife, if the Jury finde the Husband guilty, and the Wife not guilty, and a verdict be found in the Case. And albeit that the Declaration be naught, it now is holpen by the verdict, and the Plaintiff may have Judgment. Stiles Rep. 350.

6 If the Action be brought by the Plaintiff against the Husband and Wife, for words spoken by the Wife, and the Jury find the Wife guilty; this is good, and the Judgement shall be against them both. Stiles. Rep. 460. Brownl. and Goldsb. 7.

Sect 7. 7 The Count was, that the words were spoken falso & malitiose, and the Jury found it falso & injuriose. And it was agreed to be naught, and that they were not actionable, Trin. 7. Car. B. R. Norman and Simons Case.

8 The Count was, that the words were, That he is a maintainer of Thieves, and a strong Thief. And the Jury found all the words, but the word strong. And it was adjudged for the Plaintiff. Burgis Case. Dyer. 75. 21.

9 The Count was, That John Barker and his children be false Thieves, men cannot have their Cattel going upon the Common, but they

they will kill them, and eat them, &c. And the Jury found the laſt, but not the firſt words, viz. B. and his children be falſe Thieves, which are the only actionable words, and it was adjudged for the Defendant. Barbars Caſe.

If the Action be for words only, and the Plaintiff recover, he is to have no more coſts than the Jury have given damages. But if the Action be for words and deeds together; as for ſlandering and cauſing impriſonment, or the like, there he is to have full coſts. Croo. 1. part 223. Coſts Recoverable.

If the Plaintiff be non-ſuit, the Defendant ſhall have coſts. Hobb. pl. 386.

CHAP.

CHAP. XXIV.

Of a Libel.

Libel. What. Sect. 1.

A Libel, called Famosus Libellus, seu infamatoria scriptura, is taken for a scandalous Writing, or Act done, tending to the defamation of another. And this may be, and sometimes is against a publick, and sometimes against a private person; sometimes against the living, sometimes against the dead.

This may be by Writing, or by other Act done. By Writing, when any Epigram, Rhyme, or other Writing is composed, or published to the note, or contumely of another, by which his fame or dignity may be prejudiced. And this may be either verbis, or cantilenis, as where it is malitiously repeated, or sung in the presence of others. 2. Traditione, when the Libel or any Copy of it is delivered over to another, to the intent to scandalize the party; Or it may be done by other wayes. An infamous Libel without writing may be, 1. By Pictures, when the party is painted in any ignominious, or reproachful manner. 2. Or, by signs, when one doth make or fix a Gallows, or any other reproachful or ignominious sign, at the door of the party, or elsewhere, Coo. 5.126. Or the like.

The kinds of it.

Thus Jeffes exhibited an infamous writing, directed to the King against Sir Edward Cook, Chief Justice of the Kings-Bench, and against the Court for a Judgment given in the Court, affirming

affirming the Judgment to be Treason, calling him therein Traytor, and Perjured Judge; and scandalizing all the Professors of the Law, containing much scandalous matter in it. And fixed the Libel upon the great Gate, at the entrance into Westminster-Hall, and in divers other publick places, and was indicted for it in the Kings-Bench, and fined a Thousand pounds, committed to the Marshal, ordered to stand on the Pillory at Westminster and Cheapside, with a Paper of his offence on his back, to be detained in prison, till he made an open submission, in all the Courts at Westminster, and to be bound with sureties for his good Behaviour during life, Croo. 1. 125.

And so an infamous Libel was composed and published in verse, against John the Archbishop of Canterbury, and his Successor, by Circumlocutions and descriptions, and not in expresse terms, by which they were traduced and scandalized, which was punished in the Starre-Chamber, Coo. 5. 225.

And so William Peacock did exhibit his Bill in the Starre-Chamber against Sir George Reynel, For this, that the Defendant perceiving, that the Plaintiffs Father was inclined to settle his Land upon him, that he, to take off his affection, and that he might settle it upon himself, writes a Letter to his Father, That the Plaintiff was not the Son of a Peacock, and was a haunter of Taverns, and that divers Women did follow him from London, and that he longed for his death, and that his Land

Land would not be ſufficient to pay his debts, &c. And the Defendant was there fined two hundred pound, and impriſoned for it. Brownl. 2. part, 152.

And in this Caſe, it was agreed, That if the Letter had been directed to the Plaintiff himſelf, and not to the third perſon, then it ſhould not have been a Libel; or if it had been directed to a Father, for Reformation of any Acts by his Children, it ſhould not be a Libel; for if a Letter contain ſcandalous matter, and be directed to a third perſon, if it be reformatory, and for no reſpect to himſelf, it ſhall not be taken to be libellous. As if one write to a Father, and tell him of the faults of his children, and wiſh him to look to it; but here it appeareth to be done with reſpect to himſelf, Brownl. 2. part, 152.

And ſo in Sir Baptiſt Hicks Caſe, who had done many pious and charitable good works, and one A. B. did write him a Letter, that he had done theſe works, as the proud Phariſee, for vain-glory and oſtentation, and to have popular applauſe; and further, opprobriouſly taxed him with other unlawful Acts; And it was reſolved in the Starre-Chamber, that for this private Letter, that no Action of the Caſe would lye, but that it was puniſhable as a Libel. But ſome of the Judges held, that ſuch a private Letter was puniſhable. And the party was there fined five hundred pound. Popham's Rep. 139. 140.

Action of the Caſe.

And ſo the Lord Darcy ſued Markam in the Starre-Chamber, when Markam and the Lords

man

man had fought, and the Lord had parted them, and took off his man from him, and after Markam wrote five or six Letters to the Lord, and subscribed them with his name, but sent them not, but dispersed them sealed in the fields, the effect of which Letters was, That whereas the Lord said, that if he had not been his man had beaten him to clouts, he lyed, and as oft as he should speak it, he lyed; and that he would maintain with his life; and then said, that he had dispersed those Letters, that he might finde, or some body else might bring them to him, and concluded, that if he were desirous to speak with him, that he should send his Boy, and he should be well used; and he was fined five hundred pound. Hobb. Rep. pl. 153.

So Lake against Hatton in the Starre-Chamber, supposing that he delivered to his Daughter, the Lady Rosse, a writing purporting that the Countesse of Exceter had a purpose to poison both the Lady Rosse, and the Plaintiff her Father, and to charge him with a Plot, &c. Hobb. Rep. pl. 334.337. See Hetleys Rep. 10.

And as to this, these things are further to be known. *n. Judicials & Informations for Slander.*

The Rules about it, and wherein the offence lieth.

1 That it matters not whether the things said be true or false.

2 It matters not whether the party against whom it is made, be of good or evil report.

3 It matters not how it be divulged, and whether secretly or opening.

It matters not whether y Libell be true or false, if y Prosecution be by Information or indictment, but in action of Slaf, one may justifie if it is true Hob: 253. Hard. 470.

4 The offence about this lyeth either in the contriving of it, or in the procuring of it to be contrived; Or in the malicious publication of it after a man knoweth what it is. But to read it, or hear it read; or when he readeth or heareth it, to laugh at it, is no offence, or if he take a Copy of it only, and do not publish it to others, this is no offence. But if after he hath read or heard it, he repeat the same, or any part of it in the hearing of others: Or after he knoweth it to be a Libel, he readeth it to others; this is an unlawful publishing of it; And if he take a Copy of it, and do not after deliver it to a Magistrate, to examine it, it is a great evidence, that he doth publish it. Coo. 9. 60.

That if therefore one write a Letter containing scandalous matter against another, and send it not to him, but to a third person, this may be a Libel, Brownl. 2. part 152. And so some hold of a Letter written to the party himself. Popham. Rep. 139. 140.

And so it seems, of a Letter written to the party himself, and not sent to him, but scattered abroad, that he might have notice of it. Hobb. Rep. pl. 153.

5 That albeit the party, of whom the words be spoken be dead; yet the Libeller may be punished for it, be it against a private or a publick person.

6 That therefore if one finde a Libel, and will keep himself out of danger, if it be against a private man, the finder is either to burn it, or give it presently to a Magistrate; but if

it

it concern a Magistrate or other publick person, he is presently to deliver it to a Magistrate, to the intent the author of it may be found out.

Hobb. Rep. pl. 334. Coo. 5. 125. The offence, if it be against a publick Person, a Magistrate, a Lord, or eminent man, is greater, and the punishment will be greater, than where it is against a private person, or meaner man. When the Starre-Chamber stood it was punishable there, now it is punishable by Indictment in the Kings Bench, and in other Courts. The punishment of it, & the remedy of the party wronged thereby.

And if a great man be slandered by such a way, he may perhaps have his remedy by the Writ De scandalis Magnatum; and if it amount to a slander, and fall out to be within the Rules thereof, the party grieved may have an Action of the Case for a Slander in this way as well as otherwise, Brownl. 2. Rep. 152. Coo. 5. 125. But for slander to them that be dead, it is to be enquired how this should be punished. Coo. 5. 125. Coo. 12. 134. Hobb. Rep. pl. 334.

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